

**§ 4290.40 How to read this part 4290.**

(a) *Center Headings.* Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms.* Terms defined in § 4290.50 have initial capitalization in this part 4290.

(c) *“You.”* The pronoun “you” as used in this part 4290 means a RBIC unless otherwise noted.

(d) *Forms.* All references in this part to forms, and instructions for their preparation, are to the current issue of such forms.

**§ 4290.45 Responsibility for implementing this part 4290.**

The Secretary has delegated to the U.S. Small Business Administration (SBA), pursuant to an agreement under the Economy Act (31 U.S.C. 1535), the authority to implement the RBIC program, including implementing and enforcing the regulations in this part 4290. Therefore, unless specifically stated otherwise, SBA will exercise on behalf of the Secretary all responsibilities and authorities assigned to the Secretary in this part 4290.

**Subpart B—Definition of Terms Used in Part 4290****§ 4290.50 Definition of terms.**

*Act* means Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*).

*Administrator* means the Administrator of SBA.

*Affiliate* or *Affiliates* has the meaning set forth in title 13 CFR 121.103.

*Applicant* means any entity submitting an application to be licensed as a RBIC.

*Articles* mean articles of incorporation or charter and bylaws for a Corporate RBIC, the certificate and limited partnership agreement for a Partnership RBIC, and the operating agreement or other organizational documents for an LLC RBIC.

*Assistance* or *Assisted* means Financing of or management services rendered to a Portfolio Concern by or through a RBIC pursuant to the Act and this part.

*Associate* of a RBIC means any of the following:

(1)(i) An officer, director, employee or agent of a Corporate RBIC;

(ii) A Control Person, employee or agent of a Partnership RBIC;

(iii) A managing member of an LLC RBIC;

(iv) An Investment Adviser/Manager of any RBIC, including any Person who contracts with a Control Person of a RBIC to be the Investment Adviser/Manager of such RBIC; or

(v) Any Person regularly serving a RBIC on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate RBIC or 10 percent of the membership interests of an LLC RBIC, or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership RBIC. However, neither a limited partner in a Partnership RBIC nor a non-managing member in an LLC RBIC is considered an Associate if such Person is an Entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the RBIC and no more than five percent of such Person's net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a RBIC.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition

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is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the RBIC).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), "collectively" means together with any Person(s) described in paragraphs (1) through (7) of this definition.

(10) For the purposes of this definition, any Associate relationship described in paragraphs (1) through (7) of this definition that exists at any time within six months before or after the date that a RBIC provides Financing, will be considered to exist on the date of the Financing.

*Capital Impairment* has the meaning set forth in § 4290.1830(b).

*Central Registration Agent* or *CRA* means one or more agents appointed for the purpose of issuing Trust Certificates (TCs) and performing the functions enumerated in § 4290.1620 and performing similar functions for Debentures funded outside the pooling process.

*Close Relative* of an individual means:

- (1) A current or former spouse;
- (2) A father, mother, guardian, brother, sister, son, daughter; or
- (3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

*Commitment* means a written agreement between a RBIC and an Enterprise that obligates the RBIC to provide Financing (except a guarantee) to that Enterprise in a fixed or determinable sum, by a fixed or determinable future date. In this context the term "agreement" means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the RBIC's obligation to fund the Commitment, but these conditions must be outside the RBIC's control.

*Common Control* means a condition such that two or more Persons, either

through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more RBICs are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent Investment Advisor/Manager or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to the Secretary.

*Community Development Finance* means debt or equity-type investments in Rural Areas.

*Control* means the possession, direct or indirect, of the power to direct or cause, or the power to stop or hinder (also referred to as "negative Control"), the direction of the management and policies of a RBIC or other concern, whether through the ownership of voting securities, by contract, or otherwise.

*Control Person* means any Person that controls a RBIC, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership RBIC;

(2) Any Person serving as a general partner (in the case of a partnership), an officer or director (in the case of a corporation), or a manager (in the case of a limited liability company) of any entity that controls a RBIC, either directly or through an intervening entity;

(3) Any Person that—

(i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership RBIC, a LLC RBIC, or any entity described in paragraphs (1) or (2) of this definition; and

(ii) Participates in the investment decisions of a general partner of such Partnership RBIC or of a managing member of such LLC RBIC;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 50 percent of a RBIC or any entity described in paragraphs (1) or (2) of this definition.

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*Corporate RBIC* has the meaning set forth in the definition of RBIC in this section.

*Debenture* means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Secretary.

*Debt Securities* means instruments evidencing a loan with an option or any other right to acquire Equity Securities in an Enterprise or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options acquired.

*Developmental Venture Capital* means Equity Capital invested in Rural Business Concerns, with an objective of fostering economic development in Rural Areas.

*Distribution* means any transfer of cash or non-cash assets to the Secretary, the Secretary's agent or Trustee, or to partners in a Partnership RBIC, or to shareholders in a Corporate RBIC, or to members in an LLC RBIC. Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the RBIC's partners, shareholders, or members.

*Enterprise* means a Person engaged in a business or commercial activity which charges for the goods and services it provides, whether such Person is operating for profit or is subject to any legal restrictions on the distribution of profits to its owners, members, or suppliers of its equity or quasi-equity capital. An Enterprise includes:

- (1) A public, private, or cooperative for-profit or non-profit organization;
- (2) A for-profit or nonprofit business controlled by an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group; or
- (3) Any other Person.

*Entity General Partner* has the meaning set forth in § 4290.160.

*Entity Managing Member* has the meaning set forth in § 4290.160.

*Equity Capital* means Equity Securities or Subordinated Debt With Equity Features.

*Equity Securities* means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership

interests in a limited liability company, or joint venture interests.

*Farm Credit System Institution* means an institution defined in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)).

*Financing* or *Financed* means outstanding financial assistance provided to a Portfolio Concern by a RBIC, whether through:

- (1) Loans, with or without a right to acquire Equity Securities;
- (2) Debt Securities;
- (3) Equity Securities;
- (3) Subordinated Debt With Equity Features;
- (4) Guarantees; or
- (5) Purchases of securities of an Enterprise through or from an underwriter as permitted by § 4290.825.

*Guaranty Agreement* means the contract entered into by the Secretary which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures and the Secretary's rights in connection with such guarantee.

*Includible Non-Cash Gains* means those non-cash gains (as reported on SBA Form 468) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated "BBB" or "Baa", or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Secretary stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

*Institutional Investor* means Entity Institutional Investor or Individual Institutional Investor, each defined as follows:

- (1) *Entity Institutional Investors*. Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least \$1 million, or such higher amount as is specified in this paragraph (1). (See also § 4290.230(c)(4) for limitations

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on the amount of an Entity Institutional Investor's commitment that may be included in Private Capital.)

(i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association.

(ii) An insurance company.

(iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 *et seq.*)).

(iv) A holding company of any entity described in paragraph (1)(i), (ii) or (iii) of this definition.

(v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a State, or any agency or instrumentality of such government unit.

(vi) An employee benefit or pension plan (as defined in the Employee Retirement Income Security Act of 1974, as amended (Public Law 93-406, 88 Stat. 829), excluding plans established under § 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. 401(k)), as amended).

(vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, 26 U.S.C. 1, as amended.

(viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than \$10 million.

(ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.

(x) An entity whose primary purpose is to manage and invest non-Federal funds on behalf of at least three Institutional Investors described in paragraphs (1)(i) through (ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.

(xi) Any other entity that the Secretary determines to be an Institutional Investor.

(2) *Individual Institutional Investor.* (i) Any of the following individuals if he/she is also a permanent resident of the United States:

(A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended (15 U.S.C.

77a-77aa)) and whose commitment to the RBIC is backed by a letter of credit from a State or National bank acceptable to the Secretary.

(B) An individual whose personal net worth is at least \$2 million and at least ten times the amount of his or her commitment to the RBIC. The individual's personal net worth must not include the value of any equity in his or her most valuable residence.

(C) An individual whose personal net worth, not including the value of any equity in his or her most valuable residence, is at least \$10 million.

(ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition provided such individual has irrevocably appointed an agent within the United States for the service of process.

*Investment Adviser/Manager* means any Person who furnishes advice or assistance with respect to operations of a RBIC under a written contract executed in accordance with the provisions of § 4290.510.

*Lending Institution* means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ) and which has assets in excess of \$500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate's sales or business operations.

*Leverage* means financial assistance provided to a RBIC by the Secretary either through the purchase or guaranty of a RBIC's Debentures and any other SBA financial assistance evidenced by a security of the RBIC.

*Leverageable Capital* means Regulatory Capital, excluding unfunded commitments.

*LLC RBIC* has the meaning set forth in the definition of RBIC in this section.

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*Loan* means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

*Loans and Investments* means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468.

*Management Expenses* has the meaning set forth in § 4290.520.

*NAICS Manual* means the latest issue of the North American Industrial Classification System (NAICS) Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250-7954.

*1940 Act Company* means a RBIC which is registered under the Investment Company Act of 1940.

*1980 Act Company* means a RBIC which is registered under the Small Business Investment Incentive Act of 1980.

*Operational Assistance* means management, marketing, and other technical assistance that assists a Smaller Enterprise with its business development.

*Original Issue Price* means the price paid by the purchaser for securities at the time of issuance.

*Participation Agreement* means an agreement between the Secretary and an Applicant licensed as a RBIC pursuant to § 4290.390 of this part, that details the RBIC's operating plan and investment criteria and requires the RBIC to operate pursuant to the Act and this part.

*Partnership RBIC* has the meaning set forth in the definition of RBIC in this section.

*Person* means a natural person or legal entity.

*Pool* means an aggregation of guaranteed Debentures approved by the Secretary.

*Portfolio* means the securities representing a RBIC's total outstanding Financings of Enterprises. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

*Portfolio Concern* means any Enterprise Assisted by a RBIC.

*Principal Office* means the location where the greatest number of the En-

terprise's employees at any one location perform their work. However, for those Enterprises whose "primary industry" (see 13 CFR 121.107) is service or construction (see 13 CFR 121.201), the determination of principal office excludes the Enterprise's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

*Private Capital* has the meaning set forth in § 4290.230.

*Publicly Traded and Marketable* means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 (17 CFR 230.144) of the Securities Act of 1933, as amended, by the holder thereof, and are of a class which is traded on a regulated stock exchange, or is listed in NASDAQ, or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended (15 U.S.C. 77b *et seq.*), and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

*Qualified Non-private Funds* means:

(1) Funds directly or indirectly invested in any RBIC or Applicant on or after May 13, 2002 by any Federal agency other than USDA under a provision of law explicitly mandating the inclusion of those funds in the definition of "Private Capital;" and

(2) The aggregate amount of funds invested in any Applicant or RBIC by one or more States, or any political subdivisions, agencies or instrumentalities thereof, including any guarantee extended by such entities.

*Regulatory Capital* means Private Capital, excluding non-cash assets contributed to a RBIC or an Applicant unless such assets have been converted to cash or have been approved by the Secretary for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowings against such assets shall not constitute a conversion to cash.

*Relevant Venture Capital Finance* means Equity Capital in Rural Business Concerns or benefiting Rural Areas.

*Retained Earnings Available for Distribution* means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

*Rural Area* means an area that is located outside a standard metropolitan statistical area, or within a community that has a population of 50,000 or less inhabitants. As used in this definition, “community” means any area outside of a metropolitan statistical area (MSA) or any territory within an MSA that is not within an urbanized area, all as defined by the Bureau of the Census of the United States Department of Commerce (Census Bureau) at the last decennial census.

*Rural Business Concern* means an Enterprise whose Principal Office is located in a Rural Area.

*Rural Business Concern Investment* means a Financing in a Rural Business Concern whose Principal Office was located in a Rural Area at the time of the initial Financing.

*Rural Business Investment Company* or *RBIC* means a corporation organized as required by § 4290.100 (Corporate RBIC), a limited partnership organized as required by §§ 4290.100 and 4290.160 (Partnership RBIC), or a limited liability company organized as required by §§ 4290.100 and 4290.160 (LLC RBIC), that has been licensed as a RBIC pursuant to § 4290.390.

*SBA* means the U.S. Small Business Administration, an agency of the Federal Government headquartered at 409 Third Street, SW, Washington, DC 20416.

*Secondary Relative* of an individual means:

- (1) A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;
- (2) An uncle, aunt, nephew, niece, or first cousin; or
- (3) A spouse of any person described in paragraph (1) or (2) of this definition.

*Secretary* means the Secretary of Agriculture.

*Small Business Concern* means a for-profit Smaller Enterprise that meets

the definition of “business concern” in 13 CFR 121.105 and that, together with its Affiliates, meets the small business size standards set forth in 13 CFR 121.201 or 13 CFR 121.301(c) for the industry in which it is primarily engaged on the date the Financing is made (the term “primarily engaged” for purposes of this definition is defined in 13 CFR 121.107).

*Small Business Concern Investments* means a Financing in the form of Equity Capital in an Enterprise that qualified as both a Smaller Enterprise and a Small Business Concern at the time of the initial Financing.

*Small Business Investment Company* or *SBIC* means a Licensee, as that term is defined in 13 CFR 107.50.

*Smaller Enterprise* means any Rural Business Concern that, together with its Affiliates and by itself—

- (1) Meets the size standard established by SBA in 13 CFR 121.201, corresponding to each type of economic activity or industry described in the NAICS Manual for the industry in which it is primarily engaged on the date on which the Financing is made (the term “primarily engaged” for purposes of this definition is defined in 13 CFR 121.107); or

(2) Has—

- (i) A net financial worth of not more than \$6,000,000 as of the date on which the Financing is made; and

- (ii) An average net income for the two year period preceding the date on which the Financing is made of not more than \$2,000,000, after Federal income taxes (excluding any carryover losses), except that, for purposes of this clause, if the Rural Business Concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the Rural Business Concern, its net income is determined by allowing a deduction in an amount equal to the total of—

(A) If it is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this paragraph (2)(ii)(A)) multiplied by the marginal State income tax rate (or by the combined State and local income

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tax rates, as applicable) that would have applied if the Rural Business Concern were a corporation; and

(B) The net income (so determined) less any deduction for State (and local) income taxes calculated under paragraph (2)(ii)(A) of this definition multiplied by the marginal Federal income tax rate that would have applied if the Rural Business Concern were a corporation.

*Smaller Enterprise Investment* means a Financing in the form of Equity Capital in an Enterprise that qualified as a Smaller Enterprise at the time of the initial Financing.

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

*Subordinated Debt* means a debt of a debtor, common to more than one creditor, that is the subject of an agreement between two groups of creditors (whose claims would otherwise be in parity) setting forth the circumstances under which the claims of one group (senior creditors) shall be satisfied out of the resources of the common debtor that would otherwise be available for the payment of the claims of the other group (junior creditors).

*Subordinated Debt With Equity Features* means a Subordinated Debt obligation that gives to the junior creditor such additional compensation as warrants, conversion rights, any other interest in the debtor's equity, profits, increased future revenue, or a royalty interest.

*Trust* means a legal entity created for the purpose of holding guaranteed Debentures and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

*Trust Certificate Rate* means a fixed rate determined at the time Debentures are pooled.

*Trust Certificates (TCs)* means certificates issued by the Secretary, the Secretary's agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures.

*Trustee* means the trustee or trustees of a Trust.

*Undistributed Net Realized Earnings* means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468.

*Unrealized Appreciation* means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, exceeds the cost basis thereof.

*Unrealized Depreciation* means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, is below the cost basis thereof.

*Unrealized Gain (Loss) on Securities Held* means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a RBIC's Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

*Urban Area* means an area containing a city (or its equivalent), or any equivalent geographic area determined by the Census Bureau and adopted by the Secretary for purposes of this definition (about which the Secretary will publish a document in the FEDERAL REGISTER from time to time), which had a population of over 150,000 in the last decennial census and the urbanized areas containing or adjacent to that city, both as determined by the Census Bureau for the last decennial census.

*Urban Area Investment* means a Financing in an Enterprise whose Principal Office was located in an Urban Area at the time of the initial Financing.

*USDA* means the U.S. Department of Agriculture, a department of the Federal government headquartered at 1400 Independence Avenue, SW., Washington, DC 20250.

EFFECTIVE DATE NOTE: At 76 FR 80221, Dec. 23, 2011, § 4290.50 was amended by revising the definitions of *Community Development Finance*, *Debenture*, *Includible Non-Cash Gains*, *Loans and Investments*, *Retained Earnings Available for Distribution*, *Rural Area*, *Secretary*, *State*, and *Undistributed Net Realized*

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*Earnings*; revising the definition of *Institutional Investor*; in paragraph (1)(i), and adding definitions of *Leveraged RBIC* and *Non-leveraged RBIC* in alphabetical order, effective Jan. 23, 2012. For the convenience of the user, the added and revised text is set forth as follows:

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\* \* \* \* \*

*Community Development Finance* means debt securities or equity-type investments in Rural Areas.

\* \* \* \* \*

*Debenture* means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Secretary. A Debenture may be prepaid at any time without penalty.

\* \* \* \* \*

*Includible Non-Cash Gains* means those non-cash gains (as reported on SBA Form 468 or other USDA-approved form(s)) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated “BBB” or “Baa”, or better, by Standard & Poor’s Corporation or Moody’s Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Secretary stating that the non-rated debt instrument is equivalent in risk to the issuer’s investment grade debt.

*Institutional Investor* \* \* \*

(1) \* \* \*  
 (i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association, including an investment pool created entirely by such bank or savings association, the deposits of which are insured under the Federal Deposit Insurance Act.

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*Leveraged RBIC* means a RBIC that received financial assistance under this part.

\* \* \* \* \*

*Loans and Investments* means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Fi-

nancial Position on SBA Form 468 or other USDA-approved form(s).

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*Non-leveraged RBIC* means a RBIC that has not received financial assistance under this part.

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*Retained Earnings Available for Distribution* means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468 or other USDA-approved form(s)), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

*Rural Area* means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are “not urban in character.”

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the USDA shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is “rural in character” will be made by the Under Secretary of Rural Development. The



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process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is “rural in character” under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to both the appropriate Rural Development State Director and the Rural Business-Cooperative Service Administrator of USDA on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

\* \* \* \* \*

*Secretary* means the Secretary of Agriculture or his or her designee.

\* \* \* \* \*

*State* means each of the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Is-

lands, and the Federated States of Micronesia.

\* \* \* \* \*

*Undistributed Net Realized Earnings* means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468 or other USDA-approved form(s).

\* \* \* \* \*

**Subpart C—Qualifications for the RBIC Program**

**ORGANIZING A RBIC**

**§ 4290.100 Business form.**

(a) *Newly-formed for-profit.* An Applicant for a RBIC license must be a newly formed for-profit entity or, subject to §4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State. An Applicant may be organized as a corporation (“Corporate RBIC”), a limited partnership (“Partnership RBIC”), or a limited liability company (“LLC RBIC”).

(b) *Purpose.* An Applicant must be organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act: making Developmental Venture Capital investments and providing Operational Assistance to eligible Smaller Enterprises.

(c) *Articles.* The RBIC’s Articles—

(1) Must specify in general terms:

(i) The purposes for which the RBIC is formed;

(ii) The name of the RBIC;

(iii) The Rural Area or Areas in which it will operate;

(iv) The place where the RBIC’s headquarters will be located; and

(v) The amount and classes of the RBIC’s ownership interests.

(2) May contain any other provisions consistent with the Act that the RBIC may determine is appropriate to adopt to regulate its business and the conduct of its affairs.

(3) Are subject to the Secretary’s approval.

(d) *Duration*—(1) *Partnership RBICs.* If you are a Partnership RBIC:

(i) You must have a minimum duration of 10 years, or two years following