

§ 4290.504

2012. For the convenience of the user, the revised text is set forth as follows:

§ 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/sites/default/files/files/inv_valuation.pdf.

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(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468 or other USDA-approved form(s)) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

§ 4290.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports, for which you will receive the necessary software, and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.504 was amended by revising paragraph (a), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.504 Equipment of USDA or SBA officials.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.

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7 CFR Ch. XLII (1-1-12 Edition)

§ 4290.506 Safeguarding the RBIC's assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability 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

RBS and RUS, USDA

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

(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.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.509 was amended by revising paragraph (a) introductory text, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 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, whichever is later, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

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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

§ 4290.530

(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;
- (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