

§ 4290.810

(b) Become jointly or severally liable for any obligations of an unincorporated business.

§ 4290.810 **Financings in the form of Loans.**

You are permitted to make Loans to an Enterprise only if:

(a) The maturity or term of the Loan is five years or less; and

(b) You determine that making the Loan is necessary to preserve an existing Financing (other than a Loan) in that same Enterprise.

§ 4290.815 **Financings in the form of Debt Securities.**

(a) *General rule.* You may purchase Debt Securities from an Enterprise.

(b) *Restriction of options obtained by RBIC's management and employees.* Your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Secretary gives its prior written approval; or

(3) The options received are compensation for services as a member of the board of directors of the Enterprise, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar Enterprises.

[69 FR 32202, June 8, 2004, as amended at 76 FR 80224, Dec. 23, 2011]

§ 4290.820 **Financings in the form of guarantees.**

(a) *General rule.* At the request of an Enterprise or where necessary to protect your existing Financing in a Portfolio Concern, you may guarantee the monetary obligation of an Enterprise to any non-Associate creditor.

(b) *Exception.* You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business; or

(2) The amount of the guaranty plus any direct Financings to the Enterprise exceed the overline limitations of

7 CFR Ch. XLII (1-1-13 Edition)

§ 4290.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) *Pledge of RBIC's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§ 4290.825 **Purchasing securities from an underwriter or other third party.**

(a) *Securities purchased through or from an underwriter.* You may purchase the securities of an Enterprise through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the issuer, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* You must keep records available for the Secretary's inspection which show the relevant details of the transaction, including but not limited to, date, price, commissions, and the underwriter's certifications required under paragraphs (a)(3) and (c) of this section.

(c) *Underwriter's requirements.* The underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase.

(d) *Securities purchased from another RBIC.* You may purchase from, or exchange with, another RBIC, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio securities (or any interest therein) on a recourse basis, you must include the amount for

RBS and RUS, USDA

§ 4290.850

which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of an Enterprise from a non-issuer not previously described in this § 4290.825 if such acquisition is a reasonably necessary part of the overall sound Financing of the Enterprise.

§ 4290.830 Minimum term of Financing.

(a) *General rule.* The minimum term of each of your Financings is one year.

(b) *Restrictions on mandatory redemption of Equity Securities.* If you have acquired Equity Securities, options, or warrants on terms that include redemption by the Portfolio Concern, you must not require redemption by the Portfolio Concern within the first year of your acquisition except as permitted in § 4290.850.

(c) *Special rules for Loans and Debt Securities—(1) Term.* The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) *Prepayment.* You must permit voluntary prepayment of Loans and Debt Securities by the Portfolio Concern. You must obtain the Secretary's prior written approval of any restrictions on the ability of the Portfolio Concern to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If the Secretary determines that a prepayment is unreasonable, you must refund the entire penalty to the Portfolio Concern. A prepayment penalty equal to five percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered the maximum reasonable amount.

§ 4290.835 Exceptions to minimum term of Financing.

You may make a Financing with a term of less than one year but only if such Financing is in contemplation of another Financing, with a term of one year or more, to the same Enterprise.

§ 4290.840 Maximum term of Financing.

The maximum term of any Debt Security must be no longer than 20 years.

§ 4290.845 Maximum rate of amortization on Loans and Debt Securities.

The principal of any Loan, or the loan portion of any Debt Security, with a term of one year or less, cannot be amortized faster than straight line. If the term is greater than one year, the principal cannot be amortized faster than straight line for the first year.

§ 4290.850 Restrictions on redemption of Equity Securities.

(a) *Restriction on redemption.* A Portfolio Concern cannot be required to redeem Equity Securities earlier than one year from the date of the first closing unless:

(1) The Portfolio Concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

(2) You make a follow-on Financing, in which case the new securities may be redeemed in less than one year, but no earlier than the redemption date associated with your earliest Financing of the Portfolio Concern.

(b) *Redemption price.* The redemption price must be either:

(1) A fixed amount that is no higher than the price you paid for the securities; or

(2) An amount that cannot be fixed or determined before the time of the redemption. In this case, the redemption price must be based on:

(i) A reasonable formula that reflects the performance of the Portfolio Concern (such as one based on earnings or book value); or

(ii) The fair market value of the Portfolio Concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

(c) *Method.* Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.