

RBS and RUS, USDA

§ 4290.700

(f) *Other reports.* You must file any other reports the Secretary may require in writing.

§ 4290.680 Reporting changes in RBIC not subject to prior approval.

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require the Secretary's prior approval. You must report such changes to the Secretary within 30 days after the change, for post approval.

(b) *Approval by the Secretary.* You may consider any change submitted under this § 4290.680 to be approved unless the Secretary notifies you to the contrary within 90 days after receiving it. Approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions the Secretary may prescribe.

EXAMINATIONS OF RBICs BY THE SECRETARY FOR REGULATORY COMPLIANCE

§ 4290.690 Examinations.

All RBICs must submit to annual examinations by or at the direction of the Secretary for the purpose of evaluating regulatory compliance.

§ 4290.691 Responsibilities of RBIC during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 4290.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to the examiners upon request.

§ 4290.692 Examination fees.

(a) *General.* The Secretary will assess fees for examinations in accordance with this § 4290.692. Unless the Secretary determines otherwise on a case by case basis, he or she will not assess fees for special examinations to obtain specific information.

(b) *Base fee.* A base fee of \$9,200 + 0.015 percent of your assets will be assessed,

subject to adjustment in accordance with paragraph (c) of this section.

(c) *Adjustments to base fee.* The base fee will be decreased based on the following criteria:

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination or the Secretary did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee; and

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by the examiner for on-site review), you will receive a 10% discount on your base fee.

(d) *Delay fee.* If, in the sole discretion of the Secretary, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, the Secretary may assess an additional fee of up to \$500 per day.

Subpart I—Financing of Enterprises by RBICs

DETERMINING ELIGIBILITY OF AN ENTERPRISE FOR RBIC FINANCING

§ 4290.700 Requirements concerning types of Enterprises to receive Financing.

(a) *Rural Business Concern Investments.* At the close of each of your fiscal years—

(1) At least 75 percent of your Portfolio Concerns must have received a Rural Business Concern Investment; and

(2) For all Financings you have extended, you must have invested at least 75 percent (in total dollars) in Rural Business Concern Investments.

(b) *Smaller Enterprise Investments.* At the close of each of your fiscal years—

(1) More than 50 percent of your Portfolio Concerns must be Smaller Enterprises that, at the time of the initial Financing to such Enterprise, meet either the net worth/net income test or the size standard set forth in the

“Smaller Enterprise” definition in § 4290.50 of this part; and

(2) For all Financings that you have extended, you must have invested more than 50 percent (in total dollars) in Financings in the form of Equity Capital in such Enterprises.

(c) *Small Business Concern Investments.* At the close of each of your fiscal years—

(1) At least 50 percent of the Portfolio Concerns referenced in paragraph (b)(1) of this section must be Small Business Concerns; and

(2) For all Financings referenced in paragraph (b)(2) of this section, you must have invested at least 50 percent (in total dollars) in Small Business Concerns.

(d) *Urban Area Investments.* At the close of each of your fiscal years—

(1) No more than 10 percent of your Portfolio Concerns must have received Urban Area Investments; and

(2) For all Financings you have extended, you must not have invested more than 10 percent (in total dollars) in Urban Area Investments.

(e) *Non-compliance with this section.* If you have not met the percentages required in paragraphs (a), (b), (c), or (d) of this section at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year. However, you will not be eligible for additional Leverage until such time as you meet the required percentages (*see* § 4290.1120).

§ 4290.720 Enterprises that may be ineligible for Financing.

(a) *Re-lenders or re-investors.* You are not permitted to finance any Enterprise that is a re-lender or re-investor. The primary business activity of re-lenders or re-investors involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Passive Enterprises.* You are not permitted to finance a passive Enterprise.

(1) *Definition.* An Enterprise is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere

receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the Enterprise does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* With the prior written approval of the Secretary, you may finance a passive Enterprise if it passes substantially all of the proceeds through to one or more subsidiary companies, each of which is an eligible Enterprise that is not passive. For the purpose of this paragraph (b)(2), “subsidiary company” means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive Enterprise.

(3) *Exception for certain Partnership RBICs or LLC RBICs.* With the prior written approval of the Secretary, if you are a Partnership RBIC or LLC RBIC, you may form one or more wholly owned corporations in accordance with this paragraph (b)(3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Enterprise. You may form such corporation(s) only if a direct Financing to such Enterprise would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of § 4290.730(a).

(c) *Real Estate Enterprises.* (1) You are not permitted to finance:

(i) Any Enterprise classified under sector 233 (Building, Developing, and General Contracting) of the NAICS Manual, or

(ii) Any Enterprise listed under sector 531 (Real Estate) unless at least 80 percent of its revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance an Enterprise, regardless of NAICS classification, if the Financing is to be