used to acquire or refinance real property, unless the Enterprise:
 (i) Is acquiring an existing property and will use at least 51 percent of the
 usable square footage for an eligible business or commercial purpose; or
 (ii) Is constructing or renovating a building and will use at least 67 percent
 of the usable square footage for an eligible business or commercial purpose;
 or
 (iii) Occupies the subject property and uses at least 67 percent of the usa-
 ble square footage for an eligible business or commercial purpose.

(d) Project Financing. You are not permitted to finance an Enterprise if:
 (1) The assets of the Enterprise are to be reduced or consumed, generally
 without replacement, as the life of the Enterprise progresses, and the nature
 of the Enterprise requires that a stream of cash payments be made to
 the Enterprise’s financing sources, on a basis associated with the continuing
 sale of assets. Examples include real estate development projects, oil and
 gas wells, wind farms, or power facilities (including solar, geothermal, hy-
 droelectric, or biomass power facilities); or
 (2) The primary purpose of the Financing is to fund production of a single
 item or defined limited number of items, generally over a defined production
 period, and such production will constitute the majority of the activities
 of the Enterprise. Examples include motion pictures.

(e) Farm land purchases. You are not permitted to finance the acquisition of
 farmland. Farmland means land which is or is intended to be used for agricul-
 tural or forestry purposes such as the production of food, fiber, or wood, or is
 so taxed or zoned.

(f) Public interest. You are not permitted to finance any business if the
 proceeds are to be used for purposes contrary to the public interest, includ-
 ing but not limited to or activities which are in violation of law, or incon-
 sistent with free competitive enterprise.

(g) Foreign investment—(1) General rule. You are not permitted to finance
 an Enterprise if:
 (i) The funds will be used substantially for a foreign operation; or
 (ii) At the time of the Financing or within one year thereafter, more than
 49 percent of the employees or tangible assets of the Enterprise are located
 outside the United States (unless you can show, to the Secretary’s satisfac-
 tion, that the Financing was used for a specific domestic purpose).

(2) Exception. This paragraph (g) does not prohibit a Financing used to ac-
 quire foreign materials and equipment or foreign property rights for use or
 sale in the United States.

(h) Financings RBICs, SBICs, or New Markets Venture Capital Companies
 (NMVC Companies). (1) You are not permitted to provide funds, directly or in-
 directly, that will be used:
 (i) To purchase stock in or otherwise provide capital to a RBIC, SBIC or
 NMVC Company; or
 (ii) To repay an indebtedness incurred for the purpose of investing in a
 RBIC, SBIC, or NMVC Company.

(2) “NMVC Company” is defined in 13 CFR 108.50.

(i) Entities ineligible for Farm Credit System Assistance. If one or more Farm
 Credit System Institutions or their Af-
 filiates owns 15 percent or more of your
 Regulatory Capital, you may not pro-
 vide Financing to any entity that is
 not otherwise eligible to receive Fi-
 nancing from the Farm Credit System
 under the Farm Credit Act of 1971 (12
 U.S.C. 2001 et seq.).

(j) Gaming establishments. You are not
 permitted to Finance an Enterprise
 that derives, or is expected to derive,
 more than one-third of its gross annual
 revenue from legal gaming activities.

(k) Change of ownership of an Enter-
 prise. You are not permitted to Finance
 a change of ownership of an Enterprise
 unless otherwise approved by the Sec-
 retary.

§ 4290.730 Financings which constitute
 conflicts of interest.

(a) General rule. You must not self-
 deal to the prejudice of an Enterprise, the
 RBIC, its shareholders, partners or,
 members, or the Secretary. Unless you
 obtain a prior written exemption from
 the Secretary for special instances in
 which a Financing may further the
 purposes of the Act despite presenting
 a conflict of interest, you must not di-
 rectly or indirectly:
§4290.730

(1) Provide Financing to any of your Associates, except for an Enterprise that satisfies all of the following conditions:

(i) Your Associate relationship with the Enterprise is described by paragraph (8) or (9) of the definition of Associate in §4290.50.

(ii) No Person triggering the Associate relationship identified in paragraph (a)(1)(i) of the definition of Associate in §4290.50 is a Close Relative or Secondary Relative of any Person described in paragraphs (1), (2), (4), or (5) of the definition of Associate in §4290.50, and

(iii) No single Associate of yours has either a voting interest or an economic interest in the Enterprise exceeding 20 percent, and no two or more of your Associates have either a voting interest or an economic interest exceeding 33 percent. Economic interests shall be computed on a fully diluted basis, and both voting and economic interests shall exclude any interest owned through the RBIC.

(2) Provide Financing to an Associate of another RBIC if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that RBIC or any other RBIC (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) An Enterprise Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such Enterprise; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to an Enterprise to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(b) Rules applicable to Associates. Without the Secretary’s prior written approval, your Associates must not, directly or indirectly:

(i) Borrow money from any Person described in paragraph (a)(3) of this section.

(ii) Receive from an Enterprise any compensation or anything of value in connection with Assistance you provide (except as permitted under §4290.825(c)), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) Applicability of other laws. You are also bound by Federal or State laws applicable to you that govern conflicts of interest and fiduciary obligations.

(d) Financings with Associates—(1) Financings with Associates requiring prior approval. Without the Secretary’s prior written approval, you may not Finance any Enterprise in which your Associate has either a voting equity interest or total equity interests (including potential interests) of at least five percent, or effective control, except as otherwise permitted under paragraph (a)(1) of this section.

(2) Other Financings with Associates. If you and an Associate provide Financing to the same Enterprise, either at the same time or at different times, you must be able to demonstrate to the Secretary’s satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party’s financing transactions.

(3) Exceptions to paragraphs (d)(1) and (d)(2) of this section. A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Enterprise and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Enterprise on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are RBICs.

(e) Use of Associates to manage Portfolio Concerns. To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Portfolio Concern. You must identify
any such Associate in your records available for the Secretary's review under §4290.600. Without the Secretary's prior written approval, such Associate must not:

1. Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, the percentages of the Portfolio Concern's equity set forth in paragraph (a)(1) of this section.

2. Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

§4290.760 How a change in size or activity of a Portfolio Concern affects the RBIC and the Portfolio Concern.

(a) Effect on RBIC of a change in size of a Portfolio Concern. If a Portfolio Concern was a Smaller Enterprise or Small Business Concern at the time of the initial Financing but no longer qualifies as such under the size standard applicable to such entity, you may keep your investment in the Portfolio Concern and:

1. Subject to the overline limitations of §4290.740, you may provide additional Financing to the Portfolio Concern up to the time it makes a public offering of its securities.

2. Even after the Portfolio Concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering, or fund Commitments you made before the public offering.

(b) Effect of a change in business activity occurring within one year of RBIC's initial Financing—(1) Retention of Financing. Unless you receive the Secretary's written approval, you may not keep your Financing in a Portfolio Concern which becomes ineligible for financing by a RBIC by reason of a change in its business or commercial activity or for any other reason within one year of your initial Financing in the Portfolio Concern.

(2) Request for approval to retain Financing. If you request that the Secretary approve the retention of your investment, your request must include sufficient evidence to demonstrate that