

RBS and RUS, USDA

§ 4290.760

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.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this §4290.730, you need not obtain the Secretary's approval of the transaction. However, you must promptly notify the Secretary of the transaction.

(g) *Restriction on options obtained by RBIC's management and employees.* Your employees, officers, directors, managing members or general partners, or the general partners or managing members of the Investment Adviser/Manager that is providing services to you or to your general partner or managing member, 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 prior written approval; or

(3) The options received are compensation for service as a member of the board of directors of the Portfolio Concern, 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 companies.

§ 4290.740 Portfolio diversification ("overline" limitation).

(a) Without the Secretary's prior written approval, you may provide Financing or a Commitment to an Enterprise only if the resulting amount of your aggregate outstanding Financings

and Commitments to that Enterprise and its Affiliates does not exceed 20 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its current cost plus any amount of the Financing that was previously written off.

§ 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