

**§ 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.

**§ 4290.860 Financing fees and expense reimbursements a RBIC may receive from an Enterprise.**

(a) *General rule.* You may collect Financing fees and receive expense reimbursements from an Enterprise only as permitted under this § 4290.860.

(b) *Application fee.* You may collect a nonrefundable application fee from an Enterprise to review its Financing application. The application fee may be collected at the same time as the closing fee under paragraph (d) or (e) of this section, or earlier. The fee must be:

(1) No more than one percent of the amount of Financing requested (or, if two or more RBICs participate in the Financing, their combined application fees are no more than one percent of the total Financing requested); and

(2) Agreed to in writing by the Financing applicant.

(c) *The Secretary's review of application fees.* For any fiscal year, if the number of application fees you collect is more than twice the number of Financings closed, the Secretary in its sole discretion may determine that you are engaged in activities not contemplated by the Act, in violation of § 4290.500.

(d) *Closing fee—Loans.* You may charge a closing fee on a Loan if:

(1) The fee is no more than two percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than two percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(e) *Closing fee—Debt or Equity Financings.* You may charge a Closing Fee on a Debt Security or Equity Security Financing if:

(1) The fee is no more than four percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than four percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(f) *Limitation on dual fees.* If another RBIC or an Associate of yours collects a transaction fee under § 4290.900(e) in connection with your Financing of an Enterprise, the sum of the transaction fee and your application and closing fees cannot exceed the maximum application and closing fees permitted under this § 4290.860.

(g) *Expense reimbursements.* You may charge an Enterprise for the reasonable out-of-pocket expenses, other than Management Expenses, that you incur to process its Financing application. If the Secretary determines that any of your reimbursed expenses are unreasonable or are Management Expenses, the Secretary will require you to refund them to the Enterprise.

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(h) *Breakup fee.* If an Enterprise accepts your Commitment and then fails to close the Financing because it has accepted funds from another source, you may charge a “breakup fee” equal to the closing fee that you would have been permitted to charge under paragraph (d) or (e) of this section.

### § 4290.880 Assets acquired in liquidation of Portfolio securities.

(a) *General rule.* You may acquire assets in full or partial liquidation of a Portfolio Concern’s obligation to you under the conditions permitted by this § 4290.880. The assets may be acquired from the Portfolio Concern, a guarantor of its obligation, or another party.

(b) *Timely disposition of assets.* You must dispose of assets acquired in liquidation of a Portfolio security within a reasonable period of time.

(c) *Permitted expenditures to preserve assets.* (1) You may incur reasonably necessary expenditures to maintain and preserve assets acquired.

(2) You may incur reasonably necessary expenditures for improvements to render such assets saleable.

(3) You may make payments of mortgage principal and interest (including amounts in arrears when you acquired the asset), pay taxes when due, and pay for necessary insurance coverage.

(d) *The Secretary approval of expenditures.* This paragraph (d) applies if you have outstanding Leverage or are applying for Leverage. Any application for the Secretary’s approval under this paragraph must specify all expenses estimated to be necessary pending disposal of the assets. Without the Secretary’s prior written approval:

(1) Your total expenditures under paragraphs (c)(1) and (c)(2) of this section plus your total Financing(s) to the Portfolio Concern must not exceed your overline limit under § 4290.740; and

(2) Your total expenditures under paragraph (b) of this section plus your total Financing(s) to the Portfolio Concern must not exceed 35 percent of your Regulatory Capital.

## LIMITATIONS ON DISPOSITION OF ASSETS

### § 4290.885 Disposition of assets to RBIC’s Associates or to competitors of Portfolio Concerns.

Except with the Secretary’s prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate or to competitors of Portfolio Concerns if you have outstanding Leverage. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

### § 4290.900 Management fees for services provided to an Enterprise by RBIC or its Associate.

(a) *General.* This § 4290.900 applies to management services that you or your Associate provide to a Portfolio Concern during the term of a Financing or prior to Financing. It does not apply to management services that you or your Associate provide to an Enterprise that you do not finance.

(b) *The Secretary’s approval.* You must obtain the Secretary’s prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management fees.* You or your Associate may provide management services to a Portfolio Concern financed by you if:

(1) You or your Associate have entered into a written contract with the Portfolio Concern;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to the Secretary, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Portfolio Concern; and

(5) All of the management services fees paid to your Associate by a Portfolio Concern for management services provided by the Associate are allocated back to you for your benefit.

(d) *Fees for service as a board member.* You or your Associate may receive fees