

States: Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Commonwealth of Puerto Rico, South Carolina, Tennessee, and Virginia.

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(12) Three members from region number twelve comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

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Dated: December 14, 2011.

**David R. Shipman,**

*Acting Administrator.*

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BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Part 1940

### Rural Business-Cooperative Service

### Rural Utilities Service

### 7 CFR Part 4290

### RIN 0570-AA80

### Rural Business Investment Program

**AGENCY:** Rural Business-Cooperative Service; Rural Utilities Service; Rural Housing Service; and Farm Service Agency, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Rural Business-Cooperative Service is amending its regulations for the Rural Business Investment Program (RBIP) to conform it to the 2008 Farm Bill, to add provisions for Rural Business Investment Companies (RBIC) that wish to participate in a non-leveraged capacity, and to make several clarifications to the existing rule for leveraged RBICs. In addition, this rule amends the categorical exclusions from the National Environmental Policy Act by adding categorical exclusions for the RBIP for both leveraged and non-leveraged RBICs.

**DATES:** *Effective date.* This rule will become effective January 23, 2012.

*Comment date.* Written comments on the rule must be received by the Agency or carry a postmark or equivalent no

later than January 23, 2012. The comment period for the information collection under the Paperwork Reduction Act of 1995 ends January 23, 2012.

**ADDRESSES:** You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:**

*Regulation.* Michael Foore, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC, 20250; telephone number: (202) 690-4730; email: [michael.foore@wdc.usda.gov](mailto:michael.foore@wdc.usda.gov).

*Applications and other program materials.* Mark Brodziski, Specialty Programs Division, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250; telephone number: (202) 720-1400; email: [mark.brodziski@wdc.usda.gov](mailto:mark.brodziski@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Compliance With Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule does not constitute a "significant" regulatory action under Executive Order 12866. Therefore, a regulatory assessment is not required.

**Programs Affected**

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.860, Rural Business Investment Program.

**Executive Order 12372**

Executive Order 12372 requires intergovernmental consultation with State and local officials. For the Rural Business Investment Program, the Agency will conduct intergovernmental consultation in the manner delineated

in 7 CFR part 3015, subpart V, which contains the Agency's regulations for implementing Executive Order 12372.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

**Executive Order 13132, Federalism**

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this interim rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

**Executive Order 13175**

Between October 2010 and January 2011 the United States Department of Agriculture (USDA) hosted seven regional regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions established a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country as needed. The policies contained in this rule do not have implications that preempt Tribal law.

**Regulatory Flexibility Act Certification**

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant

economic impact on a substantial number of small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### Paperwork Reduction Act

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0570-0051.

#### E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to provide increased opportunities for citizens to access Government information and services electronically.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., an Environmental Impact Statement is not required.

The granting or issuance of a license under the non-leveraged RBIP program is not considered a major federal action, as defined by Council on Environmental Quality at 40 CFR 1508.18, Regulations for Implementing the Procedural Provisions of the National Policy Act of 1969 (NEPA), and therefore does not require any further NEPA documentation.

### I. Background

#### A. Rural Business Investment Program

On June 8, 2004, the Agency published an interim rule for the Rural Business Investment Program (RBIP) (69 FR 32200), a program to promote economic development and the creation of wealth and job opportunities among individuals living in rural areas and to help meet the equity capital investment needs primarily of smaller enterprises

located in such areas. Under the RBIP, for-profit Rural Business Investment Companies (RBICs) make venture capital investments in rural areas with the objectives of fostering economic development in such areas and returning maximum profits to the RBIC's investors. The regulations set forth the criteria USDA uses to select and license RBICs, guarantee its debentures, and to make grants to RBICs.

Since the interim rule was published, the Food, Conservation, and Energy Program of 2008 (the 2008 Farm Bill) was enacted. The 2008 Farm Bill affects several provisions of the RBIP rule. Specifically, Section 6027 of the 2008 Farm Bill results in regulatory modifications associated with:

- Issuance and guarantee of trust certificates (7 U.S.C. 2009cc-5(b)(3)(A));
- Fees (7 U.S.C. 2009cc-6);
- Rural Business Investment Companies (7 U.S.C. 2009cc-8(c));
- Financial institution investments (7 U.S.C. 2009cc-9);
- Contracting of functions (7 U.S.C. 2009cc-16); and
- Funding (7 U.S.C. 2009cc-18).

In addition, the Agency is looking to amend the RBIP to allow RBICs to participate without financial leverage from the Agency. The Agency published an Advanced Notice of Proposed Rulemaking (ANPRM) on March 29, 2007, (72 FR 14712) requesting comments on operating the RBIP program to allow non-leveraged RBICs. Ten comment letters were received, which were generally supportive of the addition of non-leveraged RBICs to the program. The Agency also received seven comment letters on the Interim Rule, published on June 8, 2004 (69 FR 32200), implementing the Rural Business Investment Program. Of these seven letters, three mentioned a non-leveraged RBIC program and each was supportive of the Agency implementing a non-leveraged RBIC program.

The Agency is implementing a non-leveraged RBIC program because program funding for leveraged RBICs is not available at this time. However, the Agency believes the RBIP is a valuable program that will facilitate investment in rural areas even without federal financial assistance. The amendments implementing the non-leveraged RBIC provisions are similar to many of the provisions found in the U.S. Small Business Administration's (SBA) Small Business Investment Company (SBIC) non-leveraged program (7 CFR Part 107) and thus should be familiar to potential RBICs who may be interested in this program.

Lastly, the Agency is taking this opportunity to clarify several of the provisions of the regulation.

#### B. Categorical Exclusions From the National Environmental Policy Act

The RBIC program was modeled after SBA's SBIC program, which has been in effect for more than 40 years, and in 2005, as statutorily required, the Agency and SBA entered into an interagency agreement for SBA administrative support of the RBIP. To satisfy its requirements under the National Environmental Policy Act (NEPA), SBA has in place a specific Categorical Exclusion (CatEx) for the SBIC program established under the SBA's Standard Operating Procedure Section 90 No. 57 in 7(f) (dated February 1, 1980). A categorical exclusion is a category of actions that do not individually or cumulative have a significant effect on the human environment. The SBIC CatEx provides that the following category of actions is categorically excluded from the preparation of Environmental Assessments or Environmental Impact Statements under NEPA:

Small Business Investment Company Program Actions. In those cases where the SBA is approving an SBIC action of financing construction of facilities or purchase of land, then the SBA may be required to prepare an environmental assessment.

Based upon the years of experience that SBA has had with the RBIP/SBIC program model, RBS is incorporating a similar CatEx into RBS's existing National Environmental Policy Act rule.

Because the overall RBIP approach is for a RBIC to provide working capital to its portfolio companies, there is little potential for on-the-ground impacts to the natural environment, while likely impacts to the human environment are increased employment and incomes to rural areas. To ensure that any investments will not result in project specific impacts to important resources, the CatEx provides for the preparation of an environmental assessment only "(i)n those cases where the Agency is approving an RBIP action of financing construction for facilities or purchase and development of land." In addition, the Agency will not approve licenses for RBICs in only one geographic area, but will favor wide-spread areas for rural investments, thereby ensuring that no potential cumulative impacts might arise. In summary, the RBIP is a useful tool that helps the Agency accomplish one of its primary missions to advance rural development. The provision of a new CatEx for licensing RBIC's is justified by USDA's and SBA's

experience with RBIC and SBIC investments which, thus far, have had no significant impact to the natural environment, individually or cumulatively.

## II. Discussion of Changes—Rural Business Investment Program

The following paragraphs discuss the changes being made to the RBIP regulations. As noted above, these changes are the result of (1) conforming the regulation to the 2008 Farm Bill, (2) incorporating provisions to allow RBICs to participate without leveraging, and (3) clarifying the existing regulation.

A. The Agency is adding a new section, § 4290.15, Leveraged and Non-leveraged Rural Business Investment Companies, to clarify which provisions of this part apply to leveraged RBICs and which apply to non-leveraged RBICs.

B. In § 4290.50, the Agency is amending several existing definitions and adding several others, as discussed below.

*Community Development Finance.* The current definition of Community Development Finance makes it possible for commercial bankers to qualify, even if they lack experience in debt securities or with equity-type instruments. This is not the Agency's intent. Therefore, the Agency is replacing "debt" with "debt securities."

*Debenture.* This definition is being revised to indicate that the debenture may be prepaid at any time without penalty. This change is being made in response to Section 6027(a) of the 2008 Farm Bill.

*Includible Non-Cash Gains, Loans and Investments, Retained Earnings Available for Distribution, and Undistributed Net Realized Earnings.* These definitions are being revised to make reference to "or other USDA-approved form(s)." These definitions refer to specific SBA forms. The Agency may use other forms to implement this program in the future (for example, for non-leveraged RBICs). Thus, adding this phrase now will allow the Agency the flexibility to use other forms in the future should it so decide.

*Institutional Investor.* This definition is being revised, per Section 6027(d)(1) of the 2008 Farm Bill, to allow investment pools created entirely by a bank or savings association to be able to participate in the RBIP.

*Leveraged RBIC and Non-leveraged RBIC.* These terms are being defined in order to implement these regulations clearly as the result of the addition of provisions for non-leveraged RBICs.

*Rural Area.* This change is being made because the 2008 Farm Bill

replaced the previous rural area definition specific to the RBIP with a new definition that applies to several Rural Development programs including the Business and Industry Guaranteed Loan program.

*Secretary.* This definition is being revised by adding "his or her designee" to provide flexibility in implementing the program.

*State.* This definition is being revised to conform to the latest definition being used in other Agency programs.

C. Section 4290.110 is being revised by adding the phrase "(and any other aspect identified by the USDA in a **Federal Register** notice)." This is being added to provide the Agency flexibility should other aspects associated with qualified management need to be considered.

D. Section 4290.200 is being clarified by replacing "\$ 4290.200" with "\$ 4290.210" so that the paragraph does not unnecessarily refer back to itself.

E. Under § 4290.210, the Agency is adding "Unless otherwise specified in a **Federal Register** notice" to paragraph (a) of this section. This is being done to provide the Agency flexibility to specify other Capital requirements, within the constraints of the authorizing statute, if it should subsequently determine such are needed for either leveraged RBICs or non-leveraged RBICs.

In addition, the Agency is adding a new paragraph that addresses the time frame that each RBIC will have to meet the capital requirements set forth in the section. This change is being made in response to Section 6027(c) of the 2008 Farm Bill.

F. In § 4290.300, the Agency is replacing "using the application packet" with "using an appropriate application packet." This is being done because of the provisions for non-leveraged RBICs, which are likely to use a different application packet than leveraged RBICs.

G. In § 4290.330, the Agency is renaming the section to include reference to guarantees, so that the section applies to issuance fees for both grants and debenture guarantees. In addition, the section is being amended to set the amount of fee that the Agency will charge for the issuance of a grant or debenture guarantee at \$500. This fee amount is also applicable if the Agency issues both a grant and debenture guarantee. These amendments are being made in response to Section 6027(b)(1) of the 2008 Farm Bill.

H. Section 4290.503(e)(2) is being revised to make reference to "or other USDA-approved form(s)" for the same reason cited earlier in paragraph B of the preamble. In addition, the SBA Web

site reference in § 4290.503(a) has been updated.

I. Section 4290.504(a) is being revised by removing "for which you will receive the necessary software" because it is unnecessary to the implementation of the equipment and office requirements covered in this section.

J. Section 4290.509(a) is being clarified by adding the phrase "whichever is later."

K. Several changes are being made to § 4290.550 as follows:

First. In paragraph (a), the Agency is replacing "In this 4290.550" with "For the purposes of this section," to more appropriately characterize the applicability of the section.

Second. In paragraph (b), the Agency is adding "or other USDA-approved form(s)" for the same reasons cited in paragraph B of the preamble.

Third. In paragraph (c), the Agency is replacing "under this § 4290.550" with "under this section" to more appropriately characterize the application of the section.

Fourth. The Agency is adding the word "and" to the end of paragraph (d)(2) to clarify that all three conditions are to be met.

L. The SBA Web site reference in § 4290.600(a) and (d) have been updated.

M. Section 4290.610(b) is being amended to make reference to "or other USDA-approved form(s)" for the same reason cited earlier in paragraph B of the preamble.

N. Several paragraphs in § 4290.630, including the title to the section, and § 4290.640 and its title are being revised by either removing reference to a specific SBA form number or adding reference to "or other USDA-approved form(s)" for the same reasons cited in paragraph B of the preamble. In addition, the SBA Web site reference in § 4290.630(c) has been updated.

O. In § 4290.720, the Agency is making three changes as described below.

First. In the examples presented in paragraph (d)(1), the Agency is removing reference to "wind farms, or power facilities (including solar, geothermal, hydroelectric, or biomass power facilities)" because such enterprises are now integral to the Agency's mission for energy development in rural America.

Second. The Agency is changing paragraph (i) by replacing "15 percent" with "25 percent." This change is being made in response to Section 6027(d)(2) of the 2008 Farm Bill.

Third. In paragraph (i), the Agency is replacing reference to "Regulatory Capital" with reference to the

“ownership interests” of a RBIC, either alone or in conjunction with other System institutions. This change is being made to align the program with 7 U.S.C. 2009cc–9(c).

P. The Agency is revising § 4290.740 in two ways. First, the Agency is changing the calculation of the “overline” limitation by changing “20 percent” to read “10 percent” and changing the base that the 10 percent is calculated from just Regulatory Capital (with regulatory permitted Distributions) to Regulatory Capital (with regulatory permitted Distributions) and Leverage. Second, the Agency is changing “current cost” to read “original cost” in paragraph (b).

The Agency is making these changes for several reasons. First, the changes provide the RBIC with greater flexibility in making its portfolio investments without board approval, which is consistent with industry standards. Second, the changes make the RBIC program more consistent with the SBIC program, which implemented a similar provision in the SBIC program in 2009. Third, these changes further our efforts to model the RBIC program after the SBIC program, as directed in the Conference Report (H.R. 107–424) of the authorizing statute for the RBIC program (Farm Security and Rural Investment Act of 2002). Specifically the Conference Report stated that “It is the expectation of the Managers that a considerable share of the rules and operating procedures for this program will be the same as the rules and operating procedures for the Small Business Investment Company program.”

Q. The Agency is revising § 4290.815(b) to remove “If you have outstanding Leverage or plan to obtain Leverage” because this phrase is unnecessary for leveraged RBICs and could create confusion as whether the paragraph would apply to non-leveraged RBICs and, if so, how.

R. Section 4290.1220 is being revised to make reference to “or other USDA-approved form(s)” for the same reason cited paragraph B of the preamble.

S. Several paragraphs in § 4290.1230 are being revised by either removing reference to a specific SBA form number or adding reference to “or other USDA-approved form(s)” for the same reasons cited paragraph B of the preamble.

T. The Agency is revising § 4290.1600(d) by removing reference to “fees” in the list of items that the Secretary may establish and in its place adding a provision to allow agents of the Secretary to collect a fee of not more than \$500 when they perform the functions described in 7 U.S.C. 2009cc–

5(e)(2). These changes are being made in response to Section 6027(b)(2) of the 2008 Farm Bill.

U. The Agency is revising § 4290.1810(a) by replacing “By issuing Debentures” with “Upon acceptance of a license to operate as a RBIC” and adding “all documents relating to the license, including, without limitation, the Participation Agreement and.” These changes are being made so that these provisions are applicable to both leveraged RBICs and non-leveraged RBICs.

V. Lastly, the Agency is proposing to amend this part by adding a new subpart O to allow a RBIC to apply for a license without leverage. In response to the March 29, 2007, ANPRM, the Agency received 10 comment letters, which favored allowing non-leveraged RBICs under the RBIP. The Agency also had received comment letters on the RBIP Interim Rule, of which three addressed a non-leveraged RBIC program. All three comment letters encouraged the Agency to consider a non-leveraged RBIC program. The provisions in the subpart for non-leveraged RBICs are based primarily on comments received on the March 29, 2007, ANPRM and on similar provisions found in the SBA’s SBIC non-leveraged program.

Some of the key aspects of the provisions for non-leveraged RBICs are:

- The Agency rather than SBA will be responsible for implementing the non-leveraged RBIC provisions.

- The Agency will announce in a **Federal Register** notice those types of investors in the RBIC that are eligible to participate as a non-leveraged RBIC. If the eligible categories/types of investors changes, the Agency will publish subsequent notices in the **Federal Register** updating the list. However, such changes will not be applied retroactively.

- Applications for non-leveraged status will be accepted at any time during the year.

- While the Agency may select one, more than one, or none of the applying RBICs for participation as a non-leveraged RBIC, such selection will not be made on a competitive basis.

Most of the provisions for leveraged RBICs would be applicable to non-leveraged RBICs. However, there are a number of provisions (either a section or a paragraph) for leveraged RBICs that will not be applicable to non-leveraged RBICs. There are also a number of leveraged RBIC provisions that have been modified as that provision would be applied to non-leveraged RBICs. Finally, there are two subparts (subpart J, Financial Assistance for RBICs, and

subpart N, Operational Assistance Grants for RBICs) that would not be applicable in their entirety to non-leveraged RBICs.

### III. Discussion of Changes—Categorical Exclusion From NEPA

A new paragraph (c)(7) is being added to 7 CFR 1940.310 to incorporate the new categorical exclusions for the RBIP. This new paragraph is set out in the regulatory text of this rule.

As noted above, this change is being made based on the RBIP being based its similarity to and derivation from the SBA’s SBIC program, which has a similar CatEx provision for their SBIC program, and the experience of the SBIC program in which, thus far, no significant impact to the natural environment, individually or cumulatively, has occurred.

#### List of Subjects

##### 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

##### 7 CFR Part 4290

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, part 1940 of Chapter XVIII and part 4290 of Chapter XLII of the Code of Federal Regulations are amended as follows:

### CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

#### PART 1940—GENERAL

■ 1. The authority citation for part 1940 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

#### Subpart G—Environmental Program

■ 2. Section 1940.310 is amended by adding a new paragraph (c)(7) to read as follows:

#### § 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

\* \* \* \* \*

(c) \* \* \*

(7) Rural Business Investment Program actions, which can be divided into:

(i) Non-leveraged program actions that include licensing by USDA of Rural

Business Investment Companies (RBIC); and

(ii) Leveraged program actions that include licensing by USDA of RBIC and Federal financial assistance in the form of technical grants or guarantees of debentures of an RBIC, unless such federal assistance is used to finance construction or development of land.

\* \* \* \* \*

**CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

**PART 4290—RURAL BUSINESS INVESTMENT COMPANY (RBIC) PROGRAM**

■ 3. The authority citation for part 4290 continues to read as follows:

**Authority:** 7 U.S.C. 1989 and 2099cc et seq.

**Subpart A—Introduction to Part 4290**

■ 4. A new § 4290.15 is added to read as follows:

**§ 4290.15 Leveraged and Non-leveraged Rural Business Investment Companies.**

The regulations in this part apply to rural business investment companies (RBICs) that seek leverage and to RBICs that do not seek leverage. The provisions of subparts A through N of this part apply to Leveraged RBICs and, except as indicated or as otherwise modified by subpart O of this part, to Non-leveraged RBICs. The provisions in subpart O of this part apply to Non-leveraged RBICs and, in addition, modify certain provisions in subparts A through N of this part as they apply to Non-leveraged RBICs.

**Subpart B—Definition of Terms Used in Part 4290**

■ 5. Section 4290.50 is amended by:

■ a. Revising the definitions of *Community Development Finance*, *Debenture*, *Includible Non-Cash Gains*, *Loans and Investments*, *Retained Earnings Available for Distribution*, *Rural Area*, *Secretary*, *State*, and *Undistributed Net Realized Earnings*;

■ b. Revising paragraph (1)(i) of the definition of *Institutional Investor*; and

■ b. Adding definitions of *Leveraged RBIC* and *Non-leveraged RBIC* in alphabetical order.

The revisions and additions read as follows:

**§ 4290.50 Definition of terms.**

\* \* \* \* \*

*Community Development Finance* means debt securities or equity-type investments in Rural Areas.

\* \* \* \* \*

*Debenture* means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Secretary. A Debenture may be prepaid at any time without penalty.

\* \* \* \* \*

*Includible Non-Cash Gains* means those non-cash gains (as reported on SBA Form 468 or other USDA-approved form(s)) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated “BBB” or “Baa”, or better, by Standard & Poor’s Corporation or Moody’s Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Secretary stating that the non-rated debt instrument is equivalent in risk to the issuer’s investment grade debt.

*Institutional Investor* \* \* \*  
(1) \* \* \*

(i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association, including an investment pool created entirely by such bank or savings association, the deposits of which are insured under the Federal Deposit Insurance Act.

\* \* \* \* \*

*Leveraged RBIC* means a RBIC that received financial assistance under this part.

\* \* \* \* \*

*Loans and Investments* means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468 or other USDA-approved form(s).

\* \* \* \* \*

*Non-leveraged RBIC* means a RBIC that has not received financial assistance under this part.

\* \* \* \* \*

*Retained Earnings Available for Distribution* means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468 or other USDA-approved form(s)), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

*Rural Area* means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are “not urban in character.”

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the USDA shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is “rural in character” will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is “rural in character” under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000

inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a "rural in character" designation by submitting a petition to both the appropriate Rural Development State Director and the Rural Business-Cooperative Service Administrator of USDA on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is "rural in character," including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

\* \* \* \* \*

Secretary means the Secretary of Agriculture or his or her designee.

\* \* \* \* \*

State means each of the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

\* \* \* \* \*

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468 or other USDA-approved form(s).

\* \* \* \* \*

**Subpart C—Qualifications for the RBIC Program**

■ 6. Section 4290.110 is revised to read as follows:

**§ 4290.110 Qualified management.**

An Applicant must show, to the satisfaction of the Secretary, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, the Secretary will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation (and any other managerial aspect identified by the USDA in a Federal Register notice) of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Secretary.

■ 7. Section 4290.200 is revised to read as follows:

**§ 4290.200 Adequate capital for RBICs.**

You must meet the requirements of §§ 4290.210 through 4290.230 in order to qualify as a RBIC.

■ 8. Section 4290.210 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

**§ 4290.210 Minimum capital requirements for RBICs.**

(a) *General Rule.* Unless otherwise specified in a Federal Register notice, you must have Regulatory Capital of at least \$10,000,000, or such lesser amount (but not less than \$5,000,000) and Leverageable Capital of at least \$500,000, to become a RBIC.

\* \* \* \* \*

(c) *Time frame.* Each RBIC shall have a period of 2 years to meet the capital requirements set forth in this section.

**Subpart D—Application and Approval Process for RBIC Licensing**

■ 9. Section 4290.300(b) is revised to read as follows:

**§ 4290.300 When and how to apply for a RBIC license.**

\* \* \* \* \*

(b) *Application form.* An Applicant must apply for a RBIC license using an

appropriate application packet provided by the Secretary. Upon receipt of a completed application packet, the Secretary may request clarifying or technical information on the materials submitted as part of the application.

■ 10. Section 4290.330 is revised to read as follows:

**§ 4290.330 Grant and guarantee issuance fee.**

The Applicant must pay to the Secretary an issuance fee for each grant or debenture guarantee of \$500. If both a grant and debenture guarantee are issued for the same RBIC, the issuance fee for both is \$500. An Applicant must submit this fee in advance, at the time of application submission.

**Subpart G—Managing the Operations of a RBIC**

■ 11. Section 4290.503 is amended by revising paragraphs (a) and (e)(2) to read as follows:

**§ 4290.503 RBIC's adoption of an approved valuation policy.**

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at [http://www.sba.gov/sites/default/files/files/inv\\_valuation.pdf](http://www.sba.gov/sites/default/files/files/inv_valuation.pdf).

\* \* \* \* \*

(e) \* \* \*

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468 or other USDA-approved form(s)) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

■ 12. Section 4290.504 is amended by revising paragraph (a) to read as follows:

**§ 4290.504 Equipment of USDA or SBA officials.**

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.

\* \* \* \* \*

■ 13. Section 4290.509 is amended by revising paragraph (a) introductory text to read as follows:

**§ 4290.509 Employment of USDA or SBA officials.**

(a) Without the Secretary's prior written approval, for a period of two

years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, whichever is later, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

\* \* \* \* \*

■ 14. Section 4290.550 is amended by revising paragraphs (a), (b), (c), and (d)(2) to read as follows:

**§ 4290.550 Prior approval of secured third-party debt of RBICs.**

(a) *Definition.* For the purposes of this section, “secured third-party debt” means any debt that is secured by any of your assets and not guaranteed by the Secretary, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Secretary’s written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), “expansion of the scope of a security interest or lien” does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468 or other USDA-approved form(s)) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this section, the Secretary may impose such restrictions or limitations as he or she deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Secretary will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) \* \* \*

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1; and

\* \* \* \* \*

**Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs**

■ 15. Section 4290.600 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 4290.600 General requirement for RBIC to maintain and preserve records.**

(a) Maintaining your accounting records. You must establish and maintain your accounting records using SBA’s standard chart of accounts for SBICs, unless the Secretary approves otherwise. You may obtain this chart of accounts from SBA or at [http://www.sba.gov/sites/default/files/files/inv\\_charts\\_of\\_accounts.pdf](http://www.sba.gov/sites/default/files/files/inv_charts_of_accounts.pdf).

\* \* \* \* \*

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in Circular A–110 of the Office of Management and Budget. (OMB Circulars are available from the addresses listed in 5 CFR 1310.3 and at [http://www.whitehouse.gov/omb/circulars\\_default](http://www.whitehouse.gov/omb/circulars_default).)

■ 16. Section 4290.610 is amended by revising paragraph (b) to read as follows:

**§ 4290.610 Required certifications for Loans and Investments.**

\* \* \* \* \*

(b) For each Financing made to a Small Business Concern, Size Status Declaration (SBA Form 480 or other USDA-approved form(s)), executed both by you and by the Portfolio Concern certifying that the concern is a Small Business Concern. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business Concern.

\* \* \* \* \*

■ 17. Section 4290.630 is amended by revising paragraphs (a) introductory text, (a)(1), (b) through (e), and (f) introductory text to read as follows:

**§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Secretary.**

(a) *Annual filing.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468 or other USDA-approved form(s). You must file SBA Form 468 (or other USDA-approved form(s)) on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of annual filing form.* An independent public accountant acceptable to the Secretary must audit the annual form submitted under paragraph (a) of this section.

\* \* \* \* \*

(b) *Interim filings.* When requested by the Secretary, you must file interim reports on SBA Form 468 or other USDA-approved form(s). The Secretary may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in § 4290.1220.

(c) *Standards for preparation.* You must prepare SBA Form 468 or other USDA-approved form(s) in accordance with SBA’s Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at <http://www.sba.gov/content/accounting-standards-sbics>.

(d) *Where to file.* Unless otherwise identified in a notice published in the **Federal Register**, submit all filings of forms under this section to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing.* Your annual filing of SBA Form 468 or other USDA-approved form(s) must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your SBA Form 468 or other USDA-approved form(s) must include an assessment of each such Financing with respect to:

\* \* \* \* \*

■ 18. Section 4290.640 is revised to read as follows:

**§ 4290.640 Requirement to file portfolio financing reports with the Secretary.**

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 or other USDA-approved form(s) within 30 days of the closing date.

■ 19. Section 4290.692 is amended by revising paragraph (d) to read as follows:

§ 4290.692 Examination Fees.

\* \* \* \* \*

(d) Examination 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 examination fee of up to \$500 per day.

Subpart I—Financing of Enterprises by RBICs

■ 20. Section 4290.720 is amended by revising paragraphs (d)(1) and (i) to read as follows:

§ 4290.720 Enterprises that may be ineligible for Financing.

\* \* \* \* \*

(d) \* \* \*

(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 and oil and gas wells; or

\* \* \* \* \*

(i) Entities ineligible for Farm Credit System Assistance. If one or more Farm Credit System Institutions or their Affiliates owns more than 25 percent of the ownership interests of a Rural Business Investment Company, either alone or in conjunction with other Farm Credit System Institutions (or affiliates), the Rural Business Investment Company may not provide Financing to any entity that is not otherwise eligible to receive Financing from a Farm Credit System Institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

\* \* \* \* \*

■ 21. Section 4290.740 is amended by revising paragraphs (a) introductory text and (a)(2), adding a new paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 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 10 percent of the sum of:

\* \* \* \* \*

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

(3) The total amount of Leverage provided to the Rural Business Investment Company by the Secretary since it was licensed under § 4290.390.

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

■ 22. Section 4290.815 is amended by revising paragraph (b) introductory text to read as follows:

§ 4290.815 Financings in the form of Debt Securities.

\* \* \* \* \*

(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:

\* \* \* \* \*

Subpart J—Financial Assistance for RBICs (Leverage)

■ 23. Section 4290.1220 is amended by revising paragraph (a) to read as follows:

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form) or other USDA-approved form(s), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form) or other USDA-approved form(s), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s).

\* \* \* \* \*

■ 24. Section 4290.1230 is amended by revising paragraphs (d)(1), (d)(2), and (e)(1) to read as follows:

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

\* \* \* \* \*

(d) \* \* \*

(1) A statement certifying that there has been no material adverse change in your financial condition since your last

filing of SBA Form 468 or other USDA-approved form(s) (see also § 4290.1220 for filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 or other USDA-approved form(s) in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form) or other USDA-approved form(s).

\* \* \* \* \*

(e) \* \* \*

(1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 or other USDA-approved form(s) confirming the closing of the transaction.

\* \* \* \* \*

■ 25. Section 4290.1600 is amended by revising paragraph (d) to read as follows:

§ 4290.1600 Secretary's authority to issue and guarantee Trust Certificates.

\* \* \* \* \*

(d) Formation of a Pool or Trust holding Leverage Securities. The Secretary shall approve the formation of each Pool or Trust. The Secretary may, in his or her discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust he or she deems appropriate. Notwithstanding § 4290.1130(c), any agent of the Secretary may collect a fee for the functions described in 7 U.S.C. 2009cc-5(e)(2) that does not exceed \$500.

Subpart K—RBIC's Noncompliance With Terms of Leverage

■ 26. Section 4290.1810 is amended by revising paragraph (a) to read as follows:

§ 4290.1810 Events of default and the Secretary's remedies for RBICs noncompliance with terms of Debentures.

(a) Applicability of this section. Upon acceptance of a license to operate as an RBIC, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance of the license and as fully set forth in all documents relating to the license, including, without limitation, the Participation Agreement and Debentures.

\* \* \* \* \*

■ 27. Section 4290.1840 is amended by revising paragraph (b)(1) to read as follows:

**§ 4290.1840 Computation of RBIC's Capital Impairment Percentage.**

\* \* \* \* \*

(b) \* \* \*

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468 or other USDA-approved form(s) and Includible Non-Cash Gains.

\* \* \* \* \*

28. A new subpart O is added to read as follows:

**Subpart O—Additional Requirements for Non-Leveraged Licensees and Exceptions to Regulations**

Sec.

- 4290.3000 Non-leveraged RBICs—General.
- 4290.3001–4290.3002 [Reserved]
- 4290.3003 Responsibility for implementing Non-leveraged RBICs.
- 4290.3004 [Reserved]
- 4290.3005 Qualifications for the Non-leveraged RBIC Program.
- 4290.3006–4290.3009 [Reserved]
- 4290.3010 Application and Approval Process for RBIC licensing without Leverage.
- 4290.3011–4290.3014 [Reserved]
- 4290.3015 Evaluation and selection of Non-leveraged RBICs.
- 4290.3016–4290.3019 [Reserved]
- 4290.3020 Changes in Ownership, Structure, or Control.
- 4290.3021–4290.3024 [Reserved]
- 4290.3025 Managing the Operations of a RBIC.
- 4290.3026–4290.3029 [Reserved]
- 4290.3030 Financing of Enterprises by RBICs.
- 4290.3031–4290.3034 [Reserved]
- 4290.3035 Recordkeeping, Reporting, and Examination Requirements for RBICs.
- 4290.3036–4290.3039 [Reserved]
- 4290.3040 Financial Assistance for RBICs.
- 4290.3041 Events of default and the Secretary's remedies for RBIC's noncompliance with terms of Debenture.
- 4290.3042–4290.3044 [Reserved]
- 4290.3045 Computation of RBIC's Capital Impairment.
- 4290.3046–4290.3049 [Reserved]
- 4290.3050 Operational Assistance Grants for RBICs.
- 4290.3051–4290.3099 [Reserved]

**Subpart O—Additional Requirements for Non-Leveraged Licensees and Exceptions to Regulations**

**§ 4290.3000 Non-leveraged RBICs—General.**

This subpart identifies provisions specific to RBICs seeking a non-leveraged license, including exceptions and additions to provisions associated with subparts A through N of this part.

**§§ 4290.3001–4290.3002 [Reserved]**

**§ 4290.3003 Responsibility for implementing Non-leveraged RBICs.**

Section 4290.45 does not apply to Non-leveraged RBICs. Instead, for the purposes of this part as it applies to Non-leveraged RBICs, all authorities and responsibilities assigned to the Secretary under this part shall be carried out by the Secretary, and none shall be delegated to the U.S. Small Business Administration (SBA) or the Administrator. Thus, when applying subparts A through N of this part to Non-leveraged RBICs, all references to the Small Business Association (SBA) or Administrator on behalf of USDA shall be read as the Secretary. All forms shall be submitted to USDA or its designee.

**§ 4290.3004 [Reserved]**

**§ 4290.3005 Qualifications for the Non-leveraged RBIC Program.**

(a) *Business form.* In addition to complying with the applicable provisions of § 4290.100 not otherwise modified by this section, paragraphs (a)(1) through (a)(4) of this section apply.

(1) For RBICs applying for non-leveraged status, the types of investors eligible to invest in a RBIC must have been approved by the Secretary. Investors seeking approval must submit a request to the Secretary with sufficient documentation to support their request. The USDA will announce such approved categories and types of investors in a public notice published in the **Federal Register** from time to time. Subsequent notices that modify the types of investors eligible to invest in a RBIC will not be applied retroactively.

(2) In lieu of complying with § 4290.100(d)(1)(i), you must have a minimum duration of 10 years. After 10 years, the Partnership RBIC may be terminated by a vote of your partners.

(3) In lieu of complying with § 4290.100(d)(2), if you are a LLC RBIC, you must have a minimum duration of 10 years. After 10 years, the LLC RBIC may be terminated by a vote of your members.

(4) In lieu of complying with § 4290.100(d)(3), if you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders.

(b) *Approval of initial Management Expenses.* Section 4290.140 does not apply to Non-leveraged RBICs. However, the Secretary will provide a cap on these expenses in each **Federal Register** notice soliciting applications for Non-leveraged RBICs.

(c) *Management and ownership diversity requirements.* A Non-leveraged

RBIC is subject to the provisions of § 4290.150 unless it is exempted from these provisions by the Secretary. Exemptions will only be granted when the applicant establishes, to the satisfaction of the Secretary, that granting the exemption will not unduly impair the integrity and soundness of the Non-leveraged RBIC.

(d) *Special rules for Partnership RBICs and LLC RBICs.* Paragraph (c) of § 4290.160 does not apply to Non-leveraged RBICs.

**§§ 4290.3006–4290.3009 [Reserved]**

**§ 4290.3010 Application and Approval Process for RBIC licensing without Leverage.**

(a) The provisions of § 4290.300 notwithstanding, the Secretary will accept, at any time, applications for consideration as a Non-leveraged RBIC. The number of applications that the Agency will receive each year, and any fees and conditions, will be announced annually in a **Federal Register** notice.

(b) The provisions specified in § 4290.340(d) do not apply to this subpart.

(c) The provisions specified in § 4290.370(m) do not apply to this subpart.

**§§ 4290.3011–4290.3014 [Reserved]**

**§ 4290.3015 Evaluation and selection of Non-leveraged RBICs.**

(a) *General.* Notwithstanding any other provision in this part, when selecting applications for non-leveraged status, the Secretary may select one or more applications, or none, for further consideration based on the evaluation criteria of this part.

(b) *Eligibility and completeness.* In addition to the requirements specified in § 4290.350, an Applicant under this subpart must complete a written application that includes information not otherwise exempted by the Secretary, in his or her sole discretion. The Secretary may, on his or her own initiative, exempt material from a Non-leveraged RBIC application where the Secretary determines it impedes an expedited process without a commensurate benefit to the program. To the extent that the Secretary's exemption applies to the entire program, an announcement of the exemption will be published in the **Federal Register**. The Secretary shall make a decision as to licensing an Applicant after the receipt of a complete application and will enter into a Participation Agreement with the RBIC if approved.

(c) *Effect of a RBIC license.* Paragraphs (d)(2) and (d)(3) of

§ 4290.390 do not apply to Non-leveraged RBICs.

**§§ 4290.3016–4290.3019 [Reserved]**

**§ 4290.3020 Changes in Ownership, Structure, or Control.**

Paragraph (b) in § 4290.440 does not apply to Non-leveraged RBICs.

**§§ 4290.3021–4290.3024 [Reserved]**

**§ 4290.3025 Managing the Operations of a RBIC.**

(a) *Nonperformance.* In addition to the provisions specified in § 4290.507, failure of an approved Non-leveraged RBIC to maintain sound investment practice, as determined by the Secretary, may result in loss of approval for participating in this program.

(b) *Employment of USDA or SBA officials.* Paragraph (a)(2) of § 4290.509 does not apply to Non-leveraged RBICs.

(c) *Approval of RBIC's Investment Adviser/Manager.* In addition to complying with § 4290.510, a Non-leveraged RBIC must notify the Secretary of the Management Expenses to be incurred under such contract, or of any subsequent material changes in such Management Expenses, within 30 days of execution.

(d) *Management Expenses of a RBIC.* When complying with § 4290.520, Non-leveraged RBICs do not need prior approval of initial Management Expenses and any increases in those expenses.

(e) *Restrictions on investments of idle funds by RBICs.* The provisions of § 4290.530 apply to Non-leveraged RBICs only when the Non-leveraged RBIC engages in activities not contemplated by the Act.

(f) *Prior approval of secured third-party debt of RBICs.* The provisions of § 4290.550 do not apply to Non-leveraged RBICs.

(g) *Voluntary decrease in Regulatory Capital.* When complying with § 4290.585, Non-leveraged RBICs do not need to obtain prior approval for decreases in Regulatory Capital of more than 2 percent (but not below the minimum required under this Act or these regulations). However, Non-leveraged RBICs must report the reduction to the Secretary within 30 days.

**§§ 4290.3026–4290.3029 [Reserved]**

**§ 4290.3030 Financing of Enterprises by RBICs.**

(a) *Non-compliance with this section.* The last sentence of § 4290.700(e) does not apply to Non-leveraged RBICs.

(b) *Enterprises that may be ineligible for Financing.* The provisions associated with real estate enterprises found in

§ 4290.720(c) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Secretary in accordance with § 4290.1920.

(c) *Farmland purchases.* The provisions associated with farmland purchases found in § 4290.720(e) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Secretary in accordance with § 4290.1920.

(d) *Purchasing securities from an underwriter or other third party.* Non-leveraged RBICs are exempt from the recordkeeping requirements and fee limitations in § 4290.825(b) and (c), respectively, for securities purchased through or from an underwriter.

(e) *Assets acquired in liquidation of Portfolio securities.* The provisions of § 4290.880 do not apply to Non-leveraged RBICs.

**§§ 4290.3031–4290.3034 [Reserved]**

**§ 4290.3035 Recordkeeping, Reporting, and Examination Requirements for RBICs.**

Except for § 4290.600(d), Subpart H, Recordkeeping, Reporting, and Examination Requirements for RBICs, of this part applies to Non-leveraged RBICs.

**§§ 4290.3036–4290.3039 [Reserved]**

**§ 4290.3040 Financial Assistance for RBICs.**

Subpart J, Financial Assistance for RBICs (Leveraged), of this part does not apply to Non-leveraged RBICs.

**§ 4290.3041 Events of default and the Secretary's remedies for RBIC's noncompliance with terms of Debenture.**

In addition to complying with the provisions of § 4290.1810, a RBIC's failure to comply with the terms of this part may result in the Secretary revoking the Non-leveraged RBIC's license issued under this part.

**§§ 4290.3042–4290.3044 [Reserved]**

**§ 4290.3045 Computation of RBIC's Capital Impairment.**

The provisions specified in §§ 4290.1830 and 4290.1840 do not apply to Non-leveraged RBICs.

**§§ 4290.3046–4290.3049 [Reserved]**

**§ 4290.3050 Operational Assistance Grants for RBICs.**

Subpart N, Requirements for Operational Assistance Grant to RBICs, of this part does not apply to Non-leveraged RBICs. All other references to Operational Assistance in this part do not apply to Non-leveraged RBICs.

**§§ 4290.3051–4290.3099 [Reserved]**

Dated: December 15, 2011.

**Dallas Tonsager,**  
*Under Secretary, Rural Development.*

Dated: December 15, 2011.

**Bruce Nelson,**  
*Administrator, Farm Service Agency.*

[FR Doc. 2011-32570 Filed 12-22-11; 8:45 am]

**BILLING CODE 3410-XY-P**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**Technical Amendments**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending the section of its regulations addressing the low-income designation to make minor, nonsubstantive technical corrections. The technical amendments update the regulation to reflect current agency practice and will not cause any substantive changes.

**DATES:** This rule is effective December 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Pamela Yu, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Regulatory Changes
- III. Regulatory Procedures

**I. Background<sup>1</sup>**

*A. Why is NCUA adopting this rule?*

NCUA continually reviews its regulations to “update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.” NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2, Developing and Reviewing Government Regulations. Recently, NCUA internally reviewed its regulations and determined minor revisions to section 701.34 are necessary to reflect current agency practice.

<sup>1</sup> President Obama signed the Plain Writing Act of 2010 (Pub. L. 111-274) into law on October 13, 2010 “to improve the effectiveness and accountability of federal agencies to the public by promoting clear Government communication that the public can understand and use.” This preamble is written to meet plain writing objectives.