

§ 772.6

§ 772.6 Subordination of security.

(a) *Eligibility.* The Agency shall grant a subordination of Minor Program loan security when the transaction will further the purposes for which the loan was made, and all of the following are met:

(1) The loan will still be adequately secured after the subordination, or the value of the loan security will be increased by the amount of advances to be made under the terms of the subordination.

(2) The borrower can document the ability to pay all debts including the new loan.

(3) The action does not change the nature of the borrower's activities to the extent that they would no longer be eligible for a Minor Program loan.

(4) The subordination is for a specific amount.

(5) The borrower is unable, as determined by the Agency, to refinance its loan and graduate in accordance with this subpart.

(6) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to 7 CFR part 1940, subpart G.

(7) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. "Borrower," for purposes of this subparagraph, specifically includes an individual or entity borrower and any member of an entity borrower. "Controlled substance," for the purpose of this subparagraph, is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it, and its members if an entity, have not been convicted of such a crime.

(b) *Application.* To request a subordination, a Minor Program borrower must make the request in writing and provide the following:

(1) The specific amount of debt for which a subordination is needed;

(2) An appraisal prepared in accordance with § 761.7 of this chapter, if the request is for a subordination of more

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than \$10,000, unless a sufficient appraisal report, as determined by the Agency, that is less than one year old, is on file with the Agency; and

(3) Consent and subordination, as necessary, of all other creditors' security interests.

§ 772.7 Leasing minor program loan security.

(a) *Eligibility.* The Agency may consent to the borrower leasing all or a portion of security property for Minor Program loans to a third party when:

(1) Leasing is the only feasible way to continue to operate the enterprise and is a customary practice;

(2) The lease will not interfere with the purpose for which the loan was made;

(3) The borrower retains ultimate responsibility for the operation, maintenance and management of the facility or service for its continued availability and use at reasonable rates and terms;

(4) The lease prohibits amendments to the lease or subleasing arrangements without prior written approval from the Agency;

(5) The lease terms provide that the Agency is a lienholder on the subject property and, as such, the lease is subordinate to the rights and claims of the Agency as lienholder; and

(6) The lease is for less than 3 years and does not constitute a lease/purchase arrangement, unless the transfer and assumption provisions of this subpart are met.

(b) *Application.* The borrower must submit a written request for Agency consent to lease the property.

§ 772.8 Sale or exchange of security property.

(a) For AMP loans.

(1) Sale of all or a portion of the security property may be approved when all of the following conditions are met:

(i) The property is sold for market value based on a current appraisal prepared in accordance with § 761.7 of this chapter.

(ii) The sale will not prevent carrying out the original purpose of the loan. The borrower must execute an Assurance Agreement as prescribed by the Agency. The covenant involved will remain in effect as long as the property