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to any other rights, remedies, or defenses, in law or in equity, available to the Secretary.

(g) The holder, no later than 10 days after it has repossessed a property, must advise the Secretary of such repossession. The holder shall proceed thereafter, within a reasonable time after repossession, to terminate the debtors' rights in the property. If it is a legal requirement or if the Secretary requires that the debtors' rights be terminated by public sale, the holder shall follow the procedures set forth in paragraph (b) of this section. Otherwise, the holder shall proceed in the manner set forth in § 36.4283(f).

[36 FR 1253, Jan. 27, 1971, as amended at 47 FR 12965, Mar. 26, 1982; 53 FR 34296, Sept. 6, 1988]

§ 36.4283 Foreclosure or repossession.

(a) Upon receipt by the Secretary of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any security for a guaranteed loan, the Secretary may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the provisions of paragraphs (a)(1), (2), (3), and (4) of this section:

(1) If a minimum amount has been specified in relation to a sale of the property and the holder is the successful bidder at the sale for an amount not in excess of such specified amount the holder shall dispose of the property in the manner set forth in paragraph (f) and the amount realized from the resale of the property shall govern in the final accounting for determining the rights and liabilities of the holder and the Secretary.

(2) If a minimum amount has been specified by the Secretary and:

(i) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale.

(ii) A third party is the successful bidder at the sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified less expenses allowable under § 36.4276.

(iii) The holder is the successful bidder at the sale for an amount in excess of the specified amount the indebtedness shall be credited with the net proceeds of the sale or an amount established in accordance with paragraph (f) of this section, whichever is the greater, unless the bid in excess of the specified amount was made pursuant to paragraph (d) of this section.

(3) If a minimum amount has not been specified by the Secretary under paragraph (a)(1) or (2) of this section, and the Secretary advised the holder that it did not intend to specify an amount, and the property is purchased at the sale by a third party, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d) of this section. However, if the property is purchased at the sale by the holder, the indebtedness will be credited with the net proceeds of the sale or an amount established in accordance with paragraph (f) of this section, whichever is greater.

(4) The holder shall notify the Secretary of the results of the sale within 10 days after the sale is completed.

(b) In the event that any real property which is security for a guaranteed loan is to be acquired by a holder in a manner other than as provided in paragraph (a) or (c) of this section (e.g., by strict foreclosure or by the termination without a public sale of the purchaser's interest in a land sale contract), the holder shall notify the Secretary of the acquisition within 15 days thereafter and account to the Secretary for the proceeds of the liquidation of the security in accordance with paragraph (f) of this section.

(c) When a debtor proposes to convey or transfer any property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the Secretary to the terms of such proposal shall be obtained in advance of such conveyance or transfer. If the Secretary consents thereto, the holder may acquire the property and account to the Secretary for the

proceeds of the liquidation of the security in accordance with paragraph (f) of this section.

(d) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Secretary and the holder is the successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purpose of this section.

(e) If the Secretary has specified an amount as provided in this section, and the holder learns of any material damage to the property occurring prior to the foreclosure sale or to the acceptance of a deed in lieu of foreclosure or prior to any other event to which such specified amount is applicable, the holder shall promptly advise the Secretary of such damage. Also, if the holder acquires or repossesses the property and the holder learns of any material damage to it, the holder shall promptly advise the Secretary of such damage.

(f) When the security for a guaranteed loan is acquired by the holder through foreclosure or otherwise, the holder shall resell the property within a reasonable time and may thereafter submit its claim under the guaranty. The Secretary, upon receipt of a notice of acquisition, shall determine the current reasonable value of the property and advise the holder of the minimum selling price that will be acceptable in any accounting with the Secretary upon liquidation of the security.

(1) If the holder resells the property for an amount at least equal to the minimum selling price, it shall credit the indebtedness with the proceeds of the sale.

(2) If the holder is unable to resell the property for an amount at least equal to the minimum selling price after exposure to the market for a reasonable period of time, the holder may submit to the Secretary a written advice setting forth the price, terms, conditions and expenses of any offer received. The Secretary shall thereupon:

(i) Assent to the resale of the property upon the terms of such offer, in which event the holder will credit the indebtedness with the proceeds of the sale, or

(ii) Review the minimum selling price previously established and, if appropriate, provide the holder with a reduced minimum selling price at which the property shall be further exposed to the market.

(3) If the holder resells the property and finances the sale under the terms of a new security agreement and note, the Secretary may, pursuant to paragraph (f)(3)(iv) of this section, agree to indemnify the holder against loss on the new loan.

(i) The Secretary's maximum liability under the indemnity agreement shall be the percentage of the loan originally guaranteed applied to the indebtedness as of the date of claim computation as set forth in § 36.4284(a), or the amount originally guaranteed, or the amount of the Secretary's liability under a preexisting indemnity agreement, whichever is less.

(ii) In the event the proceeds of sale are less than the total indebtedness, the Secretary may pay a partial claim for the difference between the indebtedness and the proceeds of sale and thereafter agree to indemnify the holder for the amount of the maximum liability as of the date of claim computation, less the amount of claim paid.

(iii) Subject to the limitation that the total amount payable under an indemnity agreement shall in no event exceed the Secretary's maximum liability, the remaining liability will be continued as a percentage of the new loan amount increasing or decreasing pro rata with any increase or decrease in the balance of the loan obligation.

(iv) The Secretary shall execute an indemnity agreement evidencing the amount and terms of the indemnity liability, provided:

(A) The Secretary has determined that resale of the security under an indemnity agreement is in the best interest of the Government, and the holder has obtained the prior approval of the Secretary;

(B) The terms of repayment of the proposed loan bear a proper relationship to the borrower's present and anticipated income and expenses, and the borrower is a satisfactory credit risk;

(C) The borrower executes an agreement establishing liability to the Secretary for the amount of any claim paid under the indemnity agreement;

(D) The term of the proposed loan does not exceed the maximum term allowable under § 36.4204(c)(4);

(E) The interest rate charged the borrower does not exceed the maximum rate allowable under § 36.4212 as of the date of closing pursuant to the indemnity agreement;

(F) The holder agrees to comply with VA manufactured home regulations as if the original loan had not been terminated.

(Authority: 38 U.S.C. 3712(g))

(4) If the holder has not resold the property, it may elect to submit its claim under Loan Guaranty within 60 days of the date of the Secretary's written advice of the minimum selling price.

(i) For purposes of computation of a claim submitted pursuant to this paragraph, and subject to the limitation that the maximum amount of claim payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date the holder acquired the security. Further:

(A) The minimum selling price determined by the Secretary and provided to the holder shall be credited to the indebtedness as proceeds of sale; or

(B) If no minimum selling price is provided then the current reasonable value of the property as determined by the Secretary and provided to the holder shall be credited to the indebtedness as proceeds of sale; and

The amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(ii) Allowable post-acquisition expenditures or costs paid by the holder which may be included in the accounting with the Secretary are limited to those specified in § 36.4276(c).

(g) If at the end of 6 months from the date of acquisition the holder has been unable to resell the property and no claim has been filed pursuant to paragraph (f)(4) of this section, a claim may be submitted under the guaranty and the Secretary will pay to the holder upon submission of such claim:

(1) The difference between the appraised value of the property as determined by the Secretary and the indebtedness including those costs allowable under § 36.4276 and the costs of repossessing the manufactured home not to exceed $100, plus any accrued and unpaid interest to the applicable cutoff date as set forth in § 36.4284(a) at the maximum rate allowable. For loans guaranteed prior to May 8, 1984, the Secretary will also pay accrued interest at a rate of 6 percent from such cutoff date to the date of claim but not to exceed 60 days. For loans guaranteed on or after May 8, 1984, the Secretary will pay accrued interest at a rate 4.75 percent below the contract interest rate from such cutoff date to the date of claim but not to exceed 90 days.

(Authority: 38 U.S.C. 3712(g))

(2) The amount of the guaranty payable on the total outstanding indebtedness as of the applicable cutoff date set forth in § 36.4284(a), whichever is less.

(h) If the property securing the guaranteed loan is acquired by a holder pursuant to paragraph (a), (b) or (c) of this section, or § 36.4282(g), the following provisions shall apply:

(1) The holder's notice to the Secretary after acquisition shall state the amount of the successful bid at public sale, or in the event of a repossession or a voluntary conveyance, the date of acquisition.

(2) The holder's notice after acquisition shall also provide complete occupancy data. Except with the prior approval of the Secretary the holder shall not rent the property to a new tenant nor extend the terms of an existing tenancy on other than a month-to-month basis.

(3) Except with the prior approval of the Secretary, any taxes or special assessments which constitute prior liens due and payable after acquisition of the property by the holder shall be paid by the holder sufficiently in advance of

the payment due dates to avoid penalties and to take advantage of any discounts. The holder also may include in its accounting with the Secretary any expenditures for repairs made that were reasonably necessary to properly maintain or refurbish the security property, not to exceed $400. Expenditures in excess of $400 shall not be made without the prior approval of the Secretary.

(4) As between the holder and the Secretary, the holder shall be responsible for any loss due to damage to or destruction of the property, ordinary wear and tear excepted, from the date of repossession or acquisition by the holder to the date the property has been liquidated.

(5) The holder shall include as credits in its accounting with the Secretary all rentals and other income collected from the property and insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(i) Definitions: (1) The terms *date of sale* or *date of acquisition* as used in this section are defined as the date of the event (e.g., date of repossession, date of sale confirmation when required under local practice, date of acceptance of deed in case of voluntary conveyance, etc.) which fixes the rights of the parties in the property.

(2) The term *property* or *real property* as used in this section shall include:

(i) A leasehold estate therein which at the time of closing the loan was of not less duration than that prescribed by § 36.4253, and

(ii) The rights derived by the holder through a foreclosure sale of real estate whether or not such rights constitute an estate in real property under local law.

(j) A claim for the guaranty must include a cop(y)(ies) of a current credit report(s) on the debtor(s).

(Authority: 38 U.S.C. 3712)

(k) The provisions of this section shall not be in derogation of any rights which the Secretary may have under § 36.4286. The Under Secretary for Benefits, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State, Territory, or the District of Columbia: *Provided,* That no such deviation shall impair the rights of any holder not consenting thereto with respect to loans made or approved prior to the date the holder is notified of such action.

(Information collection requirements contained in paragraph (j) were approved by the Office of Management and Budget under control number 2900–0480)

[36 FR 1253, Jan. 27, 1971, as amended at 47 FR 12965, Mar. 26, 1982; 49 FR 22081, May 25, 1984; 53 FR 34296, Sept. 6, 1988; 58 FR 37860, July 14, 1993; 61 FR 28058, June 4, 1996]

§ 36.4284 Computation of guaranty claims.

(a) Subject to the limitation that the maximum amount payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than (1) the date of judgment or of decree of foreclosure; or (2) in nonjudicial foreclosures, the date of publication of the first notice of sale; or (3) in cases in which the security is repossessed without a judgment, decree, or foreclosure, the date the holder repossesses the security; or (4) if no security is available, the date of claim but not more than 6 months after the first uncured default. Deposits or other credits or setoffs including any escrowed or earmarked funds legally applicable to the indebtedness on the date of the claim computation shall be applied in reduction of the indebtedness upon which the claim is based.

(b) Credits accruing from the proceeds of a sale or other disposition of the security shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.