§ 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.

(c) Any allowable expenditures or costs, paid by the holder, and any accrued and unpaid interest to the applicable cutoff date as set forth in paragraph (a) of this section at the maximum rate allowable, may be deducted from the proceeds of the sale of the property, or may be included in the accounting to the Secretary on such loan. For loans guaranteed prior to May 8, 1984, the holder may also either deduct from sales proceeds, or include in the accounting, accrued interest at a rate of 6 percent from such cutoff date to the date of resale or other liquidation but not to exceed 60 days. For loans guaranteed on or after May 8, 1984, the holder may also either deduct from sales proceeds, or include in the accounting, accrued interest at a rate 4.75 percent below the contract interest rate from such cutoff date to the date of resale or other liquidation but not to exceed 90 days.

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

(d) In computing the indebtedness for the purpose of filing a claim for payment of a guaranty, or in the event of a transfer of the loan under § 36.4281, or other accounting to the Secretary, the holder shall not be entitled to treat repayments theretofore made, as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

(e) Appropriate computation of the guaranty, proceeds of liquidation, and allowable costs for claims filed under § 36.4283(f)(4) are specified in § 36.4276(c).

[36 FR 1253, Jan. 27, 1971, as amended at 49 FR 22082, May 25, 1984; 58 FR 37861, July 14, 1993]

§ 36.4285 Subrogation and indemnity.

(a) The Secretary shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under the contract with the debtor except that where the holder has entered into a recourse and/or repurchase or indemnity agreement with a dealer or servicer or other entity and the Department of Veterans Affairs pays a claim under guaranty to the holder the Department of Veterans Affairs will not be subrogated to any rights the holder may have under the recourse and/or repurchase or indemnity agreement. No partial or complete release by a creditor shall impair the rights of the Secretary with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge, and deliver an appropriate instrument tendered the holder for that purpose, evidencing any payment received from the Secretary and the Secretary's resulting right of subrogation.

(c) The Secretary may cause the instrument required by paragraph (b) of this section to be filed for record in the Office of the Recorder of Deeds, or other appropriate office of the proper county, town, or State, in accordance with the applicable State law.

(d) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed under the provisions of 38 U.S.C. 3712 shall constitute a debt owing to the United States by such veteran.

(e) Whenever any veteran disposes of residential property securing a guaranteed loan obtained under 38 U.S.C. 3712, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as the Secretary may deem appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 3713(a). The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Secretary may require. Release of the veteran from liability to the Secretary will not impair or otherwise affect the Secretary's guaranty on the loan, or the liability of the veteran to the holder. Any release of liability granted to a veteran by the Secretary shall inure to the spouse of such veteran. The release of the veteran from liability to the Secretary will constitute the Secretary's prior approval to a release of the veteran from liability on the loan by the holder thereof. This release will not result in the veteran being entitled to further loan benefits unless the requirements of §36.4203 are met.

(Authority: 38 U.S.C. 3713, 3714)

(f) If, on or after July 1, 1972, any veteran disposes of residential property securing a guaranteed loan obtained by him or her under 38 U.S.C. 3712, without securing a release from liability with respect to such loan under 38 U.S.C. 3713(a) and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if the Secretary determines that:

(1) A transferee either immediate or remote is legally liable to the Secretary for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

(3) The transferee who is liable to the Secretary is found to have been a satisfactory credit risk at the time he or she acquired the property.

(Authority: 38 U.S.C. 3713(b))

(g) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(1) The proposed purchaser is creditworthy;

(2) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the loan, or has already done so; and,

(3) The payments on the loan are current.

Should these requirements be satisfied, the holder may also release the selling veteran or other person from liability on the loan. This does not apply if the approval for the assumption is granted upon special appeal to avoid immediate foreclosure.

(Authority: 38 U.S.C. 3713, 3714)

[36 FR 1253, Jan. 27, 1971, as amended at 36 FR 13032, July 13, 1971; 44 FR 16015, Mar. 16, 1979; 55 FR 37474, Sept. 12, 1990]

§ 36.4286 Partial or total loss of guaranty.

(a) There shall be no guaranty liability on the part of the Secretary in respect to any loan as to which a signature to the note, the mortgage or other security instrument is a forgery. Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any willful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty shall relieve the Secretary of liability, or shall constitute a defense against liability on account of the guaranty of the loan in respect to which the willful misrepresentation, or the fraud, is practiced: *Provided,* That if a misrepresentation, although material, is not made willfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(b) In taking security required by 38 U.S.C. 3712 and the § 36.4200 series, a holder shall obtain the required lien on real property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally in the community in which the property is situated: *Provided,* That a title will not be unacceptable by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4253. If such holder fails in this respect or fails to comply with any of the requirements of 38 U.S.C. 3712 and the § 36.4200 series with respect to:

(1) Obtaining and retaining a lien of the dignity prescribed on all property upon which a lien is required by 38 U.S.C. 3712 or the § 36.4200 series,

(2) Inclusion of power to substitute trustees,

(3) The procurement and maintenance of insurance coverage,

(4) Advice to Secretary as to default,

(5) Notice of intention to begin action,

(6) Notice to the Secretary in any suit or action, or notice of sale,

(7) The release, conveyance, substitution, or exchange of security,

(8) Lack of legal capacity of a party to the transaction incident to which the guaranty is granted,

(9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,

(10) The taking into consideration of limitations upon the quantum or quality of the estate or property,

(11) Any other requirement of 38 U.S.C. 3712 or the § 36.4200 series which does not by the terms of said section or regulations result in relieving the Secretary of all liability with respect to the loan,

no claim on the guaranty shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Secretary would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Secretary shall be offset by deduction from the amount of the guaranty otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. To the extent the loss resultant from the failure of misrepresentation