

Department of Veterans Affairs

§ 36.4323

loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date.

(c) Adjustment of cutoff dates:

(1) Any cutoff date established under § 36.4319(f) of this part or paragraph (b) of this section will be adjusted by a period of months corresponding to the number of installment payments, if any, received by the holder and credited to the indebtedness after the cutoff date is established.

(2) When a cutoff date is established under paragraph (b)(2) of this section, the actual liquidation sale date will be used for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary; if an earlier cutoff date is in effect at the time delay in a liquidation sale is caused by the Secretary, such date will not be modified by application of the provisions of paragraph (b)(2) of this section, but will be extended by an interval corresponding to the delay in the liquidation sale caused by the Secretary for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary.

(3) Any cutoff date established under § 36.4319 of this part or paragraph (b) of this section will be considered to be the liquidation sale date. Such date will be modified in accordance with paragraph (b) of this section if the provisions of that paragraph are applicable after such date has been established.

(Authority: 38 U.S.C. 501)

(d) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of this claim, 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.

(Authority: 38 U.S.C. 501)

(e) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the

proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Secretary to the extent of the debtor's liability to the Secretary as guarantor.

(Authority: 38 U.S.C. 501)

[54 FR 27163, June 28, 1989]

§ 36.4322 Computation of indebtedness.

In computing the indebtedness for the purpose of filing a claim for payment of a guaranty or for payment of an insured loss, or in the event of a transfer of the loan under § 36.4318 (a), 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.

[13 FR 7278, Nov. 27, 1948]

§ 36.4323 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 or on account of an insured loss, 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. 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 for that purpose, evidencing any payment received from the Secretary and the Secretary's resulting right of subrogation.

(c) The Secretary shall 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. The filing or failure to file such instrument for record