

§ 36.4322

38 CFR Ch. I (7-1-08 Edition)

guaranty claim, the holder may file a supplemental claim provided that such supplemental claim is filed within the time period specified in paragraph (f)(1) of this section.

(3) No claim under a guaranty shall be payable unless it is submitted within the time period specified in paragraph (f)(1) of this section.

(4) In the event that VA does not approve payment of any item submitted under a guaranty claim, VA shall notify the holder what items are being denied and the reasons for such denial. The holder may, within 30 days after the date of such denial notification, submit a request to VA that one or more items that were denied be reconsidered. The holder must present any additional information justifying payment of items denied.

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

[54 FR 27163, June 28, 1989, as amended at 73 FR 6308, Feb. 1, 2008]

§ 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 shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof.

The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

(d) As a condition to paying a claim for an insured loss the Secretary may require that the loan, including any security or judgment held therefor, be assigned to the extent of such payment, and if any claim has been filed in bankruptcy, insolvency, probate, or similar proceedings such claim may likewise be required to be so assigned.

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. chapter 37 shall constitute a debt owing to the United States by such veteran.

(Authority: 38 U.S.C. 3732)

(1) Prior to a liquidation sale, an official authorized to act for the Secretary under provisions of § 36.4342 of this part may approve a complete release of the Secretary's right to collect a debt owing to the United States under this paragraph and/or under paragraph (a) of this section provided such official determines:

(i) The loan default was caused by circumstances beyond the control of the obligor;

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the