

**§ 60.35**

**42 CFR Ch. I (10–1–03 Edition)**

must use this notice to remind the borrower of the option, without penalty, to pay all or part of the principal and accrued interest at any time.

(d) *Skip-tracing.* If, at any time, the lender or holder is unable to locate a borrower, the lender or holder must initiate skip-tracing procedures as described in §60.35(a)(2).

(Approved by the Office of Management and Budget under control numbers 0915-0043 and 0915-0108)

[48 FR 38988, Aug. 26, 1983, as amended at 52 FR 748, Jan. 8, 1987; 57 FR 28796, June 29, 1992]

**§ 60.35 HEAL loan collection.**

A lender or holder must exercise due diligence in the collection of a HEAL loan with respect to both a borrower and any endorser. In order to exercise due diligence, a lender or holder must implement the following procedures when a borrower fails to honor his or her payment obligations:

(a)(1) When a borrower is delinquent in making a payment, the lender or holder must remind the borrower within 15 days of the date the payment was due by means of a written contact. If payments do not resume, the lender or holder must contact both the borrower and any endorser at least 3 more times at regular intervals during the 120-day delinquent period following the first missed payment of that 120-day period. The second demand notice for a delinquent account must inform the borrower that the continued delinquent status of the account will be reported to consumer credit reporting agencies if payment is not made. Each of the required four contacts must consist of at least a written contact which has an address correction request on the envelope. The last contact must consist of a telephone contact, in addition to the required letter, unless the borrower cannot be contacted by telephone. The lender or holder may choose to substitute a personal contact for a telephone contact. A record must be made of each attempt to contact and each actual contact, and that record must be placed in the borrower's file. Each contact must become progressively firmer in tone. If the lender or holder is unable to locate the borrower and any endorser at any time during the period when the borrower is delinquent, the

lender or holder must initiate the skip-tracing procedures described in paragraph (a)(2) of this section.

(2) If the lender or holder is unable to locate either the borrower or the endorser at any time, the lender or holder must initiate and use skip-tracing activities which are at least as extensive and effective as those it uses to locate borrowers delinquent in the repayment of its other loans of comparable dollar value. To determine the correct address of the borrower, these skip-tracing procedures should include, but need not be limited to, contacting any other individual named on the borrower's HEAL application or promissory note, using such sources as telephone directories, city directories, postmasters, drivers license records in State and local government agencies, records of members of professional associations, consumer credit reporting agencies, skip locator services, and records at any school attended by the borrower. All skip-tracing activities used must be documented. This documentation must consist of a written record of the action taken and its date and must be presented to the Secretary when requesting preclaim assistance or when filing a default claim for HEAL insurance.

(b) When a borrower is 90 days delinquent in making a payment, the lender or holder must immediately request preclaim assistance from the Public Health Service. The Secretary does not pay a default claim if the lender or holder fails to request preclaim assistance.

(c) Prior to the filing of a default claim, a lender or holder must use, at a minimum, collection practices that are at least as extensive and effective as those used by the lender or holder in the collection of its other loans. These practices must include, but need not be limited to:

(1) Using collection agents, which may include its own collection department or other internal collection agents;

(2) Immediately notifying an appropriate consumer credit reporting agency regarding accounts overdue by more than 60 days; and

(3) Commencing and prosecuting an action for default unless:

(i) In the determination of the Secretary that:

(A) The lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful in these efforts; or

(B) Prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

(ii) For loans made before November 4, 1988, the loan involved was made in an amount of less than \$5,000; or

(iii) For loans made on or after November 4, 1988, the loan involved was made in an amount of less than \$2,500.

(d) If the Secretary's preclaim assistance locates the borrower, the lender or holder must implement the loan collection procedures described in this section. When the Secretary's preclaim assistance is unable to locate the borrower, a default claim may be filed by the lender as described in §60.40. The Secretary does not pay a default claim if the lender or holder has not complied with the HEAL statute and regulations or the lender's or holder's insurance contract.

(e) If a lender or holder does not sue the borrower, it must send a final demand letter to the borrower and any endorser at least 30 days before a default claim is filed.

(f) If a lender or holder sues a defaulted borrower or endorser, it may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(g) *Collection of chapter 7 bankruptcies.*

(1) If a borrower files for bankruptcy under chapter 7 of the Bankruptcy Act and does not file a complaint to determine the dischargeability of the HEAL loan, the lender or holder is responsible for monitoring the bankruptcy case in order to pursue collection of the loan after the bankruptcy proceedings have been completed.

(i) For any loan for which the lender or holder had not begun to litigate against the borrower prior to the imposition of the automatic stay, the period of the automatic stay is to be considered as an extended forbearance authorized by the Secretary, in addition to the 2-year period of forbearance

which lenders and holders are authorized to grant without prior approval from the Secretary. Only periods of delinquency following the date of receipt (as documented by a date stamp) of the discharge of debtor notice (or other written notification from the court or the borrower's attorney of the end of the automatic stay imposed by the Bankruptcy Court) can be included in determining default, as described in §60.40(c)(1)(i). The lender or holder must attempt to reestablish repayment terms with the borrower in writing no more than 30 days after receipt of the discharge of debtor notice (or other written notification from the court or the borrower's attorney of the end of the automatic stay imposed by the Bankruptcy Court), in accordance with the procedures followed at the end of a forbearance period. If the borrower fails to make a payment as scheduled, the lender or holder must attempt to obtain repayment through written and telephone contacts in accordance with the intervals established in paragraph (a)(1) of this section, and must perform the other HEAL loan collection activities required in this section, before filing a default claim.

(ii) For any loan for which the lender or holder had begun to litigate against the borrower prior to the imposition of the automatic stay, the lender or holder must, upon written notification from the court or the borrower's attorney that the bankruptcy proceedings have been completed, either resume litigation or treat the loan in accordance with paragraph (g)(1)(i) of this section.

(2) If the lender or holder has not received written notification of discharge within 12 months of the date that the borrower filed for bankruptcy, the lender or holder must contact the court and the borrower's attorney (if known) within 30 days to determine if the bankruptcy proceedings have been completed. If no response is received within 30 days of the date of these contacts, the lender or holder must resume its collection efforts, in accordance with paragraph (g)(1) of this section. If a written response from the court or the borrower's attorney indicates that the bankruptcy proceedings are still underway, the lender or holder is not

### § 60.36

### 42 CFR Ch. I (10-1-03 Edition)

to pursue further collection efforts until receipt of written notice of discharge, except that follow-up in accordance with this paragraph must be done at least once every 12 months until the bankruptcy proceedings have been completed.

(3) If, despite the lender or holder's compliance with required procedures, a loan subject to the requirements of paragraph (g)(1) of this section is discharged, the lender or holder must file a claim with the Secretary within 10 days of the initial date of receipt (as documented by a date stamp) of written notification of the discharge from the court or the borrower's attorney, in accordance with the procedures set forth in § 60.40(c)(4). The lender or holder also must file with the bankruptcy court an objection to the discharge of the HEAL loan, and must include with the claim documentation showing that the bankruptcy proceedings were handled properly and expeditiously (e.g., all documents sent to or received from the bankruptcy court, including evidence which shows the period of the bankruptcy proceedings).

(Approved by the Office of Management and Budget under control numbers 0915-0100 and 0915-0108)

[48 FR 38988, Aug. 26, 1983, as amended at 52 FR 749, Jan. 8, 1987; 57 FR 28796, June 29, 1992]

### § 60.36 Consequence of using an agent.

The delegation of functions to a servicing agency or other party does not relieve a lender or holder of its responsibilities under the HEAL program.

[57 FR 28797, June 29, 1992]

### § 60.37 Forbearance.

(a) *Forbearance* means an extension of time for making loan payments or the acceptance of smaller payments than were previously scheduled to prevent a borrower from defaulting on his or her payment obligations. A lender or holder must notify each borrower of the right to request forbearance.

(1) Except as provided in paragraph (a)(2) of this section, a lender or holder must grant forbearance whenever the borrower is temporarily unable to make scheduled payments on a HEAL loan and the borrower continues to repay the loan in an amount commensurate with his or her ability to repay the loan. Any circumstance which affects the borrower's ability to repay the loan must be fully documented.

(2) If the lender or holder determines that the default of the borrower is inevitable and that forbearance will be ineffective in preventing default, the lender or holder may submit a claim to the Secretary rather than grant forbearance. If the Secretary is not in agreement with the determination of the lender or holder, the claim will be returned to the lender or holder as disapproved and forbearance must be granted.

(b) A lender or holder must exercise forbearance in accordance with terms that are consistent with the 25- and 33-year limitations on the length of repayment (described in § 60.11) if the lender or holder and borrower agree in writing to the new terms. Each forbearance period may not exceed 6 months.

(c) A lender or holder may also exercise forbearance for periods of up to 6 months in accordance with terms that are inconsistent with the minimum annual payment requirement if the lender or holder complies with the requirements listed in paragraphs (c) (1) through (4) of this section. Subsequent renewals of the forbearance must also be documented in accordance with the following requirements:

(1) The lender or holder must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note. The lender or holder must state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender or holder must sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender or holder provides for deferment of all payments, the lender or holder must contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(4) The total period of forbearance (with or without interruption) granted