

determining default, as described in § 681.40(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 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. A lender or holder may utilize PACER (Public Access to Court Electronic Records) in place of

contact with the court and/or borrower's attorney.

(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 § 681.40(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).

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#### **§ 681.36 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.

#### **§ 681.37 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

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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 §681.11) 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 forbearance 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 by the lender or holder to any borrower must not exceed 2 years. However, when the borrower and the lender or holder believe that there are bona fide reasons why this period should be extended, the lender or holder may request a reasonable extension beyond the 2-year period from the Secretary.

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This request must document the reasons why the extension should be granted. The lender or holder may grant the extension for the approved time period if the Secretary approves the extension request.

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### § 681.38 Assignment of a HEAL loan.

A HEAL note may not be assigned except to another HEAL lender or organization as specified in §681.30 and except as provided in §681.40. In this section “seller” means any kind of assignor and “buyer” means any kind of assignee.

(a) *Procedure.* A HEAL note assigned from one lender or holder to another must be subject to a blanket endorsement together with other HEAL notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the HEAL note must be signed and dated by an authorized official of the seller. Within 30 days of the transaction, the buyer must notify the following parties of the assignment:

(1) The Secretary; and

(2) The borrower. The notice to the borrower must contain a clear statement of all the borrower’s rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller subsequent to receipt of the notice.

(b) *Risks assumed by the buyer.* Upon acquiring a HEAL loan, a new holder assumes responsibility for the consequences of any previous violations of applicable statutes, regulations, or the terms of the note except for defects under §681.41(d). A HEAL note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the previous holder, the borrower can also assert the defense against the new holder. In this situation, if the new holder files a default claim on a loan, the Secretary denies the default claim to the extent of the borrower’s defense. Furthermore, when a new holder files a claim on a HEAL loan, it must provide