§ 60.39 Death and disability claims.

(a) Death. The Secretary will discharge a borrower’s liability on the loan in accordance with section 738 of the Act upon the death of the borrower. The holder of the loan may not attempt to collect on the loan from the borrower’s estate or any endorser. The holder must secure a certification of death or whatever official proof is conclusive under State law. The holder must return to the sender any payments, except for refunds under § 60.21, received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(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 § 60.41(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 the Secretary with the same documentation that would have been required of the original lender.

(c) Warranty. Nothing in this section precludes the buyer of a HEAL loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of insurable loss, if any, on a claim filed on the loan. The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder. The warranty may not cover matters for which the buyer is charged with responsibility under the HEAL regulations.

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(b) Disability. (1) The Secretary will discharge a borrower’s liability on the loan in accordance with section 738 of the Act if the borrower is found to be permanently and totally disabled on recommendation of the holder of the loan and as supported by whatever medical certification the Secretary may require. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Secretary expects to continue for a long and indefinite period of time or to result in death.

(2) After being notified by the borrower or the borrower’s representative that the borrower claims to be totally and permanently disabled, the holder of the loan may not attempt to collect on the loan from the borrower or any endorser. The holder must promptly request that the Secretary determine whether a borrower has become totally and permanently disabled. With its request, the holder must submit medical evidence no more than 4 months old that it has obtained from the borrower or the borrower’s representative.

(3) If the Secretary determines that the borrower is totally and permanently disabled, the lender or holder must return to the borrower any payments, except for refunds under §60.21, that it receives after being notified that the borrower claims to be totally and permanently disabled.

(Approved by the Office of Management and Budget under control number 0915–0108)


§ 60.40  Procedures for filing claims.

(a) A lender or holder must file an insurance claim on a form approved by the Secretary. The lender or holder must attach to the claim all documentation necessary to litigate a default, including any documents required to be submitted by the Federal Claims Collection Standards, and which the Secretary may require. Failure to submit the required documentation and to comply with the HEAL statute and regulations or the lender’s or holder’s insurance contract will result in a claim not being honored. The Secretary may deny a claim that is not filed within the period specified in this section. The Secretary requires for all claims at least the following documentation:

(1) The original promissory note;

(2) An assignment to the United States of America of all right, title, and interest of the lender or holder in the note;

(3) The loan application;

(4) The history of the loan activities from the date of loan disbursement through the date of claim, including any payments made; and

(5) A Borrower Status Form (HRSA–508), documenting each deferment granted under §60.12 or a written statement from an appropriate official stating that the borrower was engaged in an activity for which he or she was entitled to receive a deferment at the time the deferment was granted.

(b) The Secretary’s payment of a claim is contingent upon receipt of all required documentation and an assignment to the United States of America of all right, title, and interest of the lender or holder in the note underlying the claim. The lender or holder must warrant that the loan is eligible for HEAL insurance.

(c) In addition, the lender or holder must comply with the following requirements for the filing of default, death, disability, and bankruptcy claims:

(1) **Default claims.** Default means the persistent failure of the borrower to make a payment when due or to comply with other terms of the note or other written agreement evidencing a loan under circumstances where the Secretary finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay the loan. In the case of a loan repayable (or on which interest is payable) in monthly installments, this failure must have persisted for 120 days. In the case of a loan repayable (or on which interest is payable) in less frequent installments, this failure must have persisted for 180 days. If, for a particular loan, an automatic stay is imposed on collection activities by a Bankruptcy Court, and the lender or holder receives written notification of the automatic stay prior to initiating legal proceedings against the borrower, the 120-