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

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. 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.

(Approved by the Office of Management and Budget under control number 915–0108)

[57 FR 28797, June 29, 1992]

§60.38 Assignment of a HEAL loan.

A HEAL note may not be assigned except to another HEAL lender, the Student Loan Marketing Association (popularly known as ''Sallie Mae''), or a public entity in the business of purchasing student loans, and except as provided in §60.40. 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;

(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; and

(3) The borrower's school, as shown on the application form supporting the loan purchased by the buyer, if the borrower is enrolled in school.

(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.

(d) *Bankruptcy.* If a lender or holder assigns a HEAL loan to a new holder, or a new holder acquires a HEAL loan under 20 U.S.C. 1092a (the Combined Payment Plan authority), and the previous holder(s) subsequently receives court notice that the borrower has filed for bankruptcy, the previous holder(s) must forward the bankruptcy notice to the purchaser within 10 days of the initial date of receipt, as documented by a date stamp, except that if it is a chapter 7 bankruptcy with no complaint for dismissal, the previous holder(s) must file the notice with the purchaser within 30 days of the initial date of receipt, as documented by a date stamp. The previous holder(s) also must file a statement with the court notifying it of the change of ownership. Notwithstanding the above, the current holder will not be held responsible for any loss due to the failure of the prior holder(s) to meet the deadline for giving notice if such failure occurs