

categories - conforming (Fannie Mae/Freddie Mac-defined high risk loans) and non-conforming (lender-defined high risk loans) (12 USC §4902(g)(1)).

Conforming Loans (Fannie Mae/Freddie Mac-Defined High Risk Loans)

Conforming loans are those loans with an original principal balance not exceeding Freddie Mac's and Fannie Mae's conforming loan limits.¹⁰ Fannie Mae and Freddie Mac are authorized under the Act to establish a category of residential mortgage transactions that are not subject to the Act's requirements for borrower-requested cancellation or automatic termination, because of the high risk associated with them.¹¹ They are however, subject to the final termination provision of the Act. As such, PMI on a conforming high risk loan must be terminated by the first day of the month following the date that is the midpoint of the loan's initial amortization schedule (in the case of a fixed rate loan) or amortization schedule then in effect (in the case of an adjustable rate loan) if, on that date, the borrower is current on the loan (12 USC § 4902(g)). (If the borrower is not current on that date, PMI should be terminated when the borrower does become current.)

Non-Conforming Loans (Lender-Defined High Risk Loans)

Non-conforming loans are those residential mortgage transactions that have an original principal balance exceeding Freddie Mac's and Fannie Mae's conforming loan limits. Lender-defined high-risk loans are not subject to the Act's requirements for borrower-requested cancellation or automatic termination. However, if a residential mortgage transaction is a lender-defined high risk loan, PMI must be terminated on the date on which the principal balance of the mortgage, based solely on the initial amortization schedule (in the case of a fixed rate loan) or the amortization schedule then in effect (in the case of an adjustable rate loan) for that mortgage and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan.

Like conforming loans that are determined to be high risk by Freddie Mac and Fannie Mae, a residential mortgage transaction that is a lender-defined high-risk loan is subject to the final termination provision of the Act.

Notices

The lender must provide written initial disclosures at consummation for all high-risk residential mortgage transactions (as defined by the lender or Fannie Mae or Freddie Mac), that in no case will PMI be required beyond the midpoint of the amortization period of the loan, if the

¹⁰ This limit was \$322,700 in 2003.

¹¹ Fannie Mae and Freddie Mac have not defined high-risk loans as of the date of this publication.

loan is current. More specific notice as to the 77 percent LTV termination standards for lender defined high-risk loans is not required under the Act.

Basic Disclosure and Notice Requirements Applicable to Residential Mortgage Transactions and Residential Mortgages

The Act requires the lender in a residential mortgage transaction to provide to the borrower, at the time of consummation, certain disclosures that describe the borrower's rights for PMI cancellation and termination. A borrower may not be charged for any disclosure required by the Act. Initial disclosures vary, based upon whether the transaction is a fixed rate mortgage, adjustable rate mortgage, or high-risk loan. The Act also requires that the borrower be provided with certain annual and other notices concerning PMI cancellation and termination. Residential mortgages are subject to certain annual disclosure requirements.

Initial Disclosures for Fixed Rate Residential Mortgage Transactions

When PMI is required for non high risk fixed rate mortgages, the lender must provide to the borrower at the time the transaction is consummated: (i) a written initial amortization schedule, and (ii) a written notice that discloses:

- The borrower's right to request cancellation of PMI, and, based on the initial amortization schedule, the date the loan balance is scheduled to reach 80 percent of the original value of the property;
- The borrower's right to request cancellation on an earlier date, if actual payments bring the loan balance to 80 percent of the original value of the property sooner than the date based on the initial amortization schedule;
- That PMI will automatically terminate when the LTV ratio reaches 78 percent of the original value of the property and the specific date that is projected to occur (based on the initial amortization schedule); and,
- The Act provides for exemptions to the cancellation and automatic termination provisions for high risk mortgages and whether these exemptions apply to the borrower's loan (12 USC §4903(a)(1)(A)).

Initial Disclosures for Adjustable Rate Residential Mortgage Transactions

When PMI is required for non high-risk adjustable rate mortgages, the lender must provide to the borrower at the time the transaction is consummated a written notice that discloses:

- The borrower's right to request cancellation of PMI on (i) the date the loan balance is first scheduled to reach 80 percent of the original value of the property based on the amortization schedule then in effect or (ii) the date the

balance actually reaches 80 percent of the original value of the property based on actual payments. The notice must also state that the servicer will notify the borrower when either (i) or (ii) occurs;

- That PMI will automatically terminate when the loan balance is first scheduled to reach 78 percent of the original value of the property based on the amortization schedule then in effect. The notice must also state that the borrower will be notified when PMI is terminated (or that termination will occur when the borrower becomes current on payments); and,
- That there are exemptions to the cancellation and automatic termination provisions for high-risk mortgages and whether such exemptions apply to the borrower's loan (12 USC §4903(a)(1)(B)).

Initial Disclosures for High Risk Residential Mortgage Transactions

When PMI is required for high risk residential mortgage transactions, the lender must provide to the borrower a written notice stating that PMI will not be required beyond the date that is the midpoint of the loan's amortization period if, on that date, the borrower is current on the payments as required by the terms of the loan. The lender must provide this notice at consummation. The lender need not provide disclosure of the termination at 77 percent LTV for lender defined high-risk mortgages (12 USC §4903(a)(2)).

Annual Disclosures for Residential Mortgage Transactions

For all residential mortgage transactions, including high risk mortgages for which PMI is required, the servicer must provide the borrower with an annual written statement that sets forth the rights of the borrower to PMI cancellation and termination and the address and telephone number that the borrower may use to contact the servicer to determine whether the borrower may cancel PMI (12 USC §4903(a)(3)).

Disclosures for Existing Residential Mortgages

When PMI was required for a residential mortgage consummated before July 29, 1999, the servicer must provide to the borrower an annual written statement that:

- States that PMI may be canceled with the consent of the lender or in accordance with state law; and
- Provides the servicer's address and telephone number, so that the borrower may contact the servicer to determine whether the borrower may cancel PMI (12 USC §4903(b)).

Notification Upon Cancellation or Termination of PMI Relating to Residential Mortgage Transactions

General

The servicer must, not later than 30 days after PMI relating to a residential mortgage transaction is canceled or terminated, notify the borrower in writing that:¹²

- PMI has terminated and the borrower no longer has PMI; and
- No further premiums, payments or other fees are due or payable by the borrower in connection with PMI (12 USC §4904(a)).

Notice of Grounds/Timing

If a servicer determines that a borrower in a residential mortgage transaction does not qualify for PMI cancellation or automatic termination, the servicer must provide the borrower with a written notice of the grounds relied on for that determination. If an appraisal was used in making the determination, the servicer must give the appraisal results to the borrower. If a borrower does not qualify for cancellation, the notice must be provided not later than 30 days following the later of: (i) the date the borrower's request for cancellation is received; or (ii) the date on which the borrower satisfies any evidence and certification requirements of the mortgage holder. If the borrower does not meet the requirements for automatic termination, the notice must be provided not later than 30 days following the scheduled termination date (12 USC §4904(b)).

Disclosure Requirements for Lender-Paid Mortgage Insurance

Definitions

Borrower paid mortgage insurance (BPMI) means PMI is required for a residential mortgage transaction, the payments for which are made by the borrower.

Lender paid mortgage insurance (LPMI) means PMI that is required for a residential mortgage transaction, the payments for which are made by a person other than the borrower.

Loan commitment means a prospective lender's written confirmation of its approval, including any applicable closing conditions, of the application of a prospective borrower for a residential mortgage loan (12 USC 4905(a)).

Initial Notice

In the case of LPMI required for a residential mortgage transaction, the Act requires that the lender provide a written

¹² For adjustable rate mortgages, the initial notice to borrowers must state that the servicer will notify the borrower when the cancellation and automatic termination dates are reached (12 USC §4903(a)(1)(B)). Servicers should take care that the appropriate notices are made to borrowers when those dates are reached.