

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:<sup>12</sup>

- 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

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<sup>12</sup> 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.

notice to the borrower not later than the date on which a loan **commitment** is made. The written notice must advise the borrower of the differences between LPMI and BPMI by notifying the borrower that LPMI:

- Differs from BPMI because it cannot be canceled by the borrower or automatically terminated as provided under the Act;
- Usually results in a mortgage having a higher interest rate than it would in the case of BPMI; and,
- Terminates only when the mortgage is refinanced (as that term is defined in the Truth in Lending Act, 15 U.S.C. §1601 et seq., and Regulation Z, 12 CFR §226.20), paid off, or otherwise terminated.

The notice must also provide:

- That LPMI and BPMI have both benefits and disadvantages;
- A generic analysis of the costs and benefits of a mortgage in the case of LPMI versus BPMI over a ten-year period, assuming prevailing interest and property appreciation rates; and,
- That LPMI may be tax-deductible for federal income taxes, if the borrower itemizes expenses for that purpose (12 USC §4905(c)(1)).

#### Notice at Termination Date

Not later than 30 days after the termination date that would apply in the case of BPMI, the servicer shall provide to the borrower a written notice indicating that the borrower may wish to review financing options that could eliminate the requirement for LPMI in connection with the mortgage (12 USC §4905(c)(2)).

#### Fees for Disclosures

As stated previously, no fee or other cost may be imposed on a borrower for the disclosures or notifications required to be given to a borrower by lenders or servicers under the Act (12 USC §4906).

#### Civil Liability

##### Liability Dependent upon Type of Action

Servicers, lenders and mortgage insurers that violate the Act are liable to borrowers as follows:

- Individual Action
  - In the case of individual borrowers:
    - Actual damages (including interest accruing on such damages);
    - Statutory damages not to exceed \$2,000;
    - Costs of the action, and

- Reasonable attorney fees.
- Class Action
  - In the case of a class action suit against a defendant that is subject to section 10 of the Act, (i.e., regulated by the federal banking agencies, NCUA or the Farm Credit Administration):
    - Such statutory damages as the court may allow up to the lesser of \$500,000 or 1 percent of the liable party's net worth;
    - Costs of the action; and
    - Reasonable attorney fees.
  - In the case of a class action suit against a defendant that is not subject to section 10 of the Act, (i.e., not regulated by the federal banking agencies, NCUA, or the Farm Credit Administration):
    - Actual damages (including interest accruing on such damages);
    - Statutory damages up to \$1,000 per class member but not to exceed the lesser of \$500,000; or 1 percent of the liable party's gross revenues;
    - Costs of the action; and
    - Reasonable attorney fees (12 USC §4907(a)).

#### Statute of Limitations

A borrower must bring an action under the Act within two years after the borrower discovers the violation (12 USC §4907(b)).

#### Mortgage Servicer Liability Limitation

A servicer shall not be liable for its failure to comply with the requirements of the Act if the servicer's failure to comply is due to the mortgage insurer's or lender's failure to comply with the Act (12 USC §4907(c)).

#### Enforcement

The Act directs the federal banking agencies to enforce the Act under 12 USC §1818 or any other authority conferred upon the agencies by law. Under the Act the agencies shall:

- Notify applicable lenders or servicers of any failure to comply with the Act;
- Require the lender or servicer, as applicable, to correct the borrower's account to reflect the date on which PMI should have been canceled or terminated under the Act; and,
- Require the lender or servicer, as applicable, to return unearned PMI premiums to a borrower who paid premiums after the date on which the borrower's obligation to pay PMI premiums ceased under the Act (12 USC §4909).