

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).