

- the borrower submits a written cancellation request;
- the borrower has a good payment history;⁸
- the borrower is current;⁹ and
- the borrower satisfies any requirement of the mortgage holder for: (i) evidence of a type established in advance that the value of the property has not declined below the original value; and (ii) certification that the borrower's equity in the property is not subject to a subordinate lien (12 USC §4902(a)(4)).

Once PMI is canceled, the servicer may not require further PMI payments or premiums more than 30 days after the later of: (i) the date on which the written request was received or (ii) the date on which the borrower satisfied the evidence and certification requirements of the mortgage holder described previously (12 USC §4902(e)(1)).

Automatic Termination

The Act requires a servicer to automatically terminate PMI for residential mortgage transactions on the date that:

- the principal balance of the mortgage is first scheduled to reach 78 percent of the original value of the secured property (based solely on the initial amortization schedule in the case of a fixed rate loan or on the amortization schedule then in effect in the case of an adjustable rate loan, irrespective of the outstanding balance), if the borrower is current; or
- if the borrower is not current on that date, on the first day of the first month following the date that the borrower becomes current (12 USC §4902(b)).

If PMI is terminated, the servicer may not require further payments or premiums of PMI more than 30 days after the termination date or the date following the termination date on which the borrower becomes current on the payments, whichever is sooner (12 USC §4902(e)(2)).

There is no provision in the automatic termination section of the Act, as there is with the borrower-requested PMI cancellation section, that protects the lender against declines in property value or subordinate liens. The automatic termination provisions make no reference to good payment history (as prescribed in the borrower-requested provisions), but state only that the borrower must be current on mortgage payments (12 USC §4902(b)).

⁸ A borrower has a good payment history if the borrower: (1) has not made a payment that was 60 days or more past due within the first 12 months of the last 2 years prior to the later of the cancellation date, or the date that the borrower requests cancellation; or (2) has not made a payment that was 30 days or more past due within the 12 months prior to the later of the cancellation date or the date that the borrower requests cancellation.

⁹ The Act does not define current.

Final Termination

If PMI coverage on a residential mortgage transaction was not canceled at the borrower's request or by the automatic termination provision, the servicer must terminate PMI coverage by the first day of the month immediately following the date that is the midpoint of the loan's amortization period if, on that date, the borrower is current on the payments required by the terms of the mortgage (12 USC §4902(c)). (If the borrower is not current on that date, PMI should be terminated when the borrower does become current.)

The midpoint of the amortization period is halfway through the period between the first day of the amortization period established at consummation and ending when the mortgage is scheduled to be amortized. The servicer may not require further payments or premiums of PMI more than 30 days after PMI is terminated (12 USC §4902(e)(3)).

Loan Modifications

If a borrower and mortgage holder agree to modify the terms and conditions of a loan pursuant to a residential mortgage transaction, the cancellation, termination or final termination dates shall be recalculated to reflect the modification (12 USC §4902(d)).

Exclusions

The Act's cancellation and termination provisions do not apply to residential mortgage transactions for which Lender Paid Mortgage Insurance (LPMI) is required (12 USC §4905(b)).

Return of Unearned Premiums

The servicer must return all unearned PMI premiums to the borrower within 45 days after cancellation or termination of PMI coverage. Within 30 days after notification by the servicer of cancellation or termination of PMI coverage, a mortgage insurer must return to the servicer any amount of unearned premiums it is holding to permit the servicer to return such premiums to the borrower (12 USC §4902(f)).

Accrued Obligations for Premium Payments

The cancellation or termination of PMI does not affect the rights of any lender, servicer or mortgage insurer to enforce any obligation of a borrower for payments of premiums that accrued before the cancellation or termination occurred (12 USC §4902 (h)).

Exceptions to Cancellation and Termination Provisions for High Risk Residential Mortgage Transactions

The borrower-requested cancellation at 80 percent LTV and the automatic termination at 78 percent LTV requirements of the Act do not apply to "high risk" loans. However, high-risk loans are subject to final termination and are divided into two

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