

## CFPB Bulletin 2015-03

**Date:** August 4, 2015

**Subject:** Compliance Bulletin: Private Mortgage Insurance Cancellation and Termination

The Bureau of Consumer Financial Protection (CFPB) is issuing this compliance bulletin to provide guidance to assist residential mortgage servicers and subservicers (collectively, servicers) in their compliance with the private mortgage insurance (PMI) cancellation and termination provisions of the Homeowners Protection Act of 1998 (HPA). This compliance bulletin explains HPA requirements and describes examples from CFPB's supervisory experience of PMI cancellation and termination procedures that violate the HPA or create a substantial risk of noncompliance.

### A. HPA Requirements

#### 1. *Passage of the HPA*

The HPA became effective on July 29, 1999, and was later amended on December 27, 2000, to provide technical corrections and clarification. Prior to its enactment, no federal law provided borrowers with a right to cancel their PMI coverage, and the few state laws that provided PMI cancellation rights at that time each contained separate and different standards. While some lenders would terminate PMI coverage when a borrower reached a certain level of equity in the property, other lenders would keep PMI coverage in place for the life of the loan, and borrowers often had trouble determining their lenders' PMI cancellation standards. Congress passed the HPA to address these borrower difficulties in cancelling PMI and to institute uniform nationwide standards for PMI cancellation and termination.<sup>1</sup>

#### 2. *Borrower-Requested Cancellation*

A borrower may initiate cancellation of PMI coverage for residential mortgage transactions by submitting a written request to the servicer. For a borrower who has initiated cancellation, the HPA provides that, if the borrower meets certain requirements, PMI shall be cancelled on the "**cancellation date**."<sup>2</sup> If the borrower does not meet those requirements on the "cancellation date," the HPA provides that PMI shall be canceled at a later date once the borrower meets the specified requirements. The HPA defines "cancellation date" as, at the option of the borrower, either: (1) the date on which the principal balance of the mortgage is first scheduled to reach 80 percent of the "**original value**" of the property (regardless of the outstanding balance), or (2) the

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<sup>1</sup> While this compliance bulletin uses the term "borrower" throughout for ease of reference, the HPA uses the term "mortgagor," which is defined as "the original borrower under a residential mortgage or his or her successors or assignees." 12 USC 4901(11).

<sup>2</sup> 12 USC 4902(a).

date on which the principal balance of the mortgage reaches 80 percent of the “*original value*” of the property based on actual payments.<sup>3</sup>

As noted, in addition to reaching the 80% loan-to-value (LTV) threshold, the borrower must meet certain other requirements for borrower-requested cancellation:

- The borrower must have a good payment history;<sup>4</sup>
- The borrower must be current on the loan;<sup>5</sup>
- The borrower must satisfy any requirement of the holder of the mortgage for certification that the borrower’s equity in the property is not subject to a subordinate lien;<sup>6</sup> and
- Finally, the borrower must satisfy any requirement of the holder of the mortgage for evidence (of a type established in advance and made known to the borrower by the servicer) that the *value of the property has not declined below the original value*.<sup>7</sup>

A borrower may make extra principal payments that advance the cancellation date. In determining whether a borrower meets the requirements for borrower-requested cancellation of PMI coverage, servicers may require a property appraisal as evidence that the value of the property has not declined below the original value, and servicers may require the borrower to pay for the appraisal. While the appraisal may be appropriate evidence to establish that the current value of the property has not declined below the original value, the CFPB cautions servicers and consumers that for timing purposes, the “cancellation date” is calculated based on the original value and not the current value. This appraisal should be used only to determine whether the property’s value has declined below the original value. If the property’s value has not declined below the original value, the servicer must assess the timing of the borrower’s PMI cancellation by calculating when the principal balance of the mortgage is scheduled to reach or has reached 80% of the original value of the property, based either on the appropriate amortization schedule or actual payments.

### 3. *Automatic Termination*

In addition to providing borrowers with a right to request PMI cancellation, the HPA provides that, if the borrower is current on the loan, the requirement for PMI must automatically be terminated for residential mortgage transactions on the “*termination date*.”<sup>8</sup> The HPA defines

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<sup>3</sup> 12 USC 4901(2). For fixed rate mortgages, the amortization calculation is based on the initial amortization schedule. For adjustable-rate mortgages, the amortization calculation is based on the amortization schedule then in effect for the mortgage. The term “original value” generally means the lesser of the sales price of the secured property, as reflected in the contract, or the appraised value at the time of loan consummation. 12 USC 4901(12).

<sup>4</sup> 12 USC 4902(a)(2). The HPA defines “good payment history” generally as the borrower having made no payments that were 30 days or more past due in the prior 12 months, or payments that were 60 days or more past due in the 12-month period beginning 24 months before the later of the cancellation date or the date the borrower requests cancellation. 12 USC 4901(4).

<sup>5</sup> 12 USC 4902(a)(3).

<sup>6</sup> 12 USC 4902(a)(4)(B).

<sup>7</sup> 12 USC 4902(a)(4)(A).

<sup>8</sup> 12 USC 4902(b)(1).

the “termination date” as the date on which the principal balance of the mortgage is first scheduled to reach 78 percent of the original value of the property securing the loan (irrespective of the outstanding balance for that mortgage on that date).<sup>9</sup> If the borrower is not current on the loan on the “termination date,” the HPA requires that PMI automatically terminate on the first day of the first month beginning after the date that the borrower becomes current on the loan.<sup>10</sup>

If these conditions are met, automatic termination of PMI is required even if the current value of the property has declined below the original value. Because current value is not a factor in determining the “termination date,” servicers may not require a borrower to pay for a property valuation as a condition of automatic termination of PMI. Additionally, a borrower cannot advance the “termination date” by making additional payments to lower the principal balance of the mortgage. This is unlike the borrower-requested “cancellation date” described above, which is the date on which the principal balance of the mortgage is first scheduled to reach 80 percent of the “original value” of the property *or* the date on which the principal balance of the mortgage reaches 80 percent of the “original value” *based on actual payments*.<sup>11</sup>

Supervision has identified violations of this provision in one or more examinations, both for borrowers who were current on the “termination date” and for borrowers who were delinquent on the “termination date” but later became current. The CFPB encourages servicers to be mindful that in contrast to the cancellation date, the termination date does not permit a mortgage holder to require evidence of the property’s current value, nor is a servicer required to determine the actual principal balance based on actual payments. Rather, the automatic termination date is not dependent on fluctuations in property value.

#### 4. *Final Termination*

If PMI is not terminated under the borrower-requested cancellation or automatic termination provisions, the HPA provides that a requirement for PMI coverage cannot be imposed beyond the first day of the month following the date that is the midpoint of the amortization period of the loan if, on that date, the borrower is current on the loan.<sup>12</sup> The midpoint of the amortization period is the point in time halfway through the period that begins on the first day of the amortization period established at consummation and ends when the mortgage is scheduled to be amortized. For a standard 30-year mortgage loan, the midpoint of the amortization period would be the first day of the month following the 180<sup>th</sup> payment.<sup>13</sup>

Since the HPA applies only to residential mortgage loans consummated on or after July 29, 1999, standard 30-year mortgage loans would not have started becoming eligible for final PMI termination under this provision until August 2014. The CFPB reminds servicers that they

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<sup>9</sup> 12 USC 4901(18). For fixed rate mortgages, the amortization calculation is based on the initial amortization schedule. For adjustable-rate mortgages, the amortization calculation is based on the amortization schedule then in effect.

<sup>10</sup> 12 USC 4902(b)(2).

<sup>11</sup> 12 USC 4901(12).

<sup>12</sup> 12 USC 4902(c).

<sup>13</sup> 12 USC 4901(7).

should have appropriate policies, procedures, and processes in place to ensure that they are terminating borrowers' PMI coverage consistent with the HPA requirements, particularly with respect to the final termination provisions.

### 5. PMI Refunds

In general, the HPA prohibits a servicer from collecting PMI premiums more than 30 days after the termination date, or, when a borrower requests cancellation, more than 30 days after the later of the date the borrower's request is received or the date on which the borrower satisfies any evidence and certification requirements of the holder of the mortgage for PMI cancellation.<sup>14</sup> When a servicer collects unearned PMI premiums, the HPA requires the servicer to return such unearned premiums to the borrower no later than 45 days after the termination or cancellation of the borrower's PMI coverage.<sup>15</sup> In one or more mortgage servicing examinations, CFPB examiners have found instances of improper collection of unearned PMI premiums and excessive delays in processing borrower requests for PMI cancellation.<sup>16</sup>

Supervision has also noted in one or more prior examinations that some servicers engage in a practice of placing the amount of the returned premiums into the borrower's escrow account. Supervision has cited at least one servicer for a Section 4902(f) violation because, after crediting funds to the borrower's escrow account, the servicer's vendor kept the returned premiums in the borrower's escrow account indefinitely rather than returning the premiums to the borrower within 45 days. The CFPB cautions servicers to monitor third-party vendors and to ensure that any unearned PMI premiums are returned directly to the borrower within 45 days rather than placed indefinitely in the borrower's escrow account.

### 6. Annual Disclosures

When PMI is required in connection with a residential mortgage transaction, the HPA requires a servicer to provide the borrower an annual written statement disclosing the borrower's right to PMI cancellation or termination and an address and telephone number that the borrower may use to contact the servicer to determine whether the borrower may cancel PMI.<sup>17</sup> In one or more prior mortgage servicing examinations, CFPB examiners have found instances in which servicers did not send the required annual disclosures to borrowers, or in which servicers did not include in the annual disclosures the contact information that the HPA requires.

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<sup>14</sup> 12 USC 4902(e). The "evidence and certification requirements" are those referenced in 12 USC 4902(a)(4) (*see supra* at footnotes 6 and 7).

<sup>15</sup> 12 USC 4902(f).

<sup>16</sup> *See* Supervisory Highlights: Summer 2013, Section 2.2.2 (Payment Processing), *available at* [http://files.consumerfinance.gov/f/201308\\_cfpb\\_supervisory-highlights\\_august.pdf](http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf), and Supervisory Highlights: Winter 2013, Section 2.1.3 (Payment Processing), *available at* [http://files.consumerfinance.gov/f/201401\\_cfpb\\_supervisory-highlights-winter-2013.pdf](http://files.consumerfinance.gov/f/201401_cfpb_supervisory-highlights-winter-2013.pdf).

<sup>17</sup> 12 USC 4903(a)(3).

## B. Investor Guidelines

Many mortgage loans are owned by Government-Sponsored Enterprises, or GSEs, such as Fannie Mae or Freddie Mac. These and other loan investors often create their own internal PMI cancellation guidelines that may include PMI cancellation provisions beyond those that the HPA provides.

The CFPB cautions servicers to implement investor guidelines in a way that does not lead them to violate consumer financial law. Both the HPA and some investor requirements contain similar LTV thresholds for PMI cancellation and termination, and use similar measures of the property's value. Servicers should nonetheless remember that investor guidelines cannot *restrict* the PMI cancellation and termination rights that the HPA provides to borrowers.

### 1. Loan-to-Value Requirements

Some investor guidelines base the PMI cancellation date LTV calculations on the *current* value of the borrower's property, in contrast to the HPA, which bases the cancellation date LTV calculations on the property's *original* value. Investor guidelines using LTV calculations based on the current value of the property may permit PMI cancellation in some situations when the HPA does not provide borrowers with a right to request PMI cancellation based on the original value of the property. For example, as described above, a borrower whose property value has declined below the original value may not be eligible for borrower-requested PMI cancellation under the HPA.<sup>18</sup> Such a borrower may nonetheless still be able to request PMI cancellation under investor guidelines that permit PMI cancellation using LTV calculations based on the current value of the property, if such guidelines do not disqualify a borrower whose property has declined below the original value. As another example, increases in a borrower's property value after the origination of the loan do not affect the borrower's PMI cancellation right under the HPA, because the HPA bases the cancellation right on the original value of the property. However, such property value increases may affect the borrower's LTV ratio based on the current value of the property, and may allow PMI cancellation under investor guidelines at an earlier date than the date the HPA provides borrowers with a right to request PMI cancellation.

In one or more prior mortgage servicing examinations, Supervision has observed that many servicers confuse or replace HPA requirements with elements of investor guidelines. For example, in at least one examination, CFPB examiners noted that a servicer incorrectly applied an investor's 75% PMI cancellation LTV threshold to the original value of the property, instead of the 80% LTV threshold required by the HPA, and improperly denied a borrower's cancellation request on that ground. Similarly, in at least one examination, CFPB examiners noted that a servicer relied entirely on investor guidelines to determine a borrower's PMI cancellation rights and had no policies in place to ensure that PMI was properly canceled in accordance with HPA requirements.

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<sup>18</sup> Under the HPA, the borrower's PMI automatic termination right would be unaffected by the property's decline in value.

## 2. *Seasoning*

The HPA does not contain any requirements for a loan's tenure before a borrower may request cancellation or be eligible for automatic PMI termination. Nonetheless, in at least one examination, CFPB examiners noted that a servicer imposed a two-year seasoning requirement to automatically terminate PMI, when the HPA does not provide for such a requirement.<sup>19</sup>

The CFPB expects mortgage servicers, among others subject to the HPA, to incorporate into their compliance management systems adequate measures to ensure compliance with HPA requirements.

### **C. Regulatory Requirements**

This compliance bulletin summarizes existing requirements under the law and findings the Bureau has made in the course of exercise of its supervisory and enforcement authority under the HPA. It does not itself establish any binding obligations. It is therefore exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>20</sup> The Bureau has determined that this compliance bulletin summarizes existing requirements and does not establish any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act.<sup>21</sup>

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<sup>19</sup> See Supervisory Highlights: Winter 2013 at Section 2.1.3.

<sup>20</sup> 5 U.S.C. 603(a), 604(a).

<sup>21</sup> 44 U.S.C. 3501, *et seq.*