



9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Partners

Thomas E. Black, Jr., P. C.\*

Calvin C. Mann, Jr., P. C.

Gregory S. Graham, P. C.

Shawn P. Black \*\*

Regina M. Uhl

Senior Lawyers

David F. Dulock

Diane M. Gleason

Associates

Peter B. Idziak \*\*

Daniel S. Engle\*\*\*

Of Counsel

David M. Tritter

Benjamin R. Idziak \*\*

\* Also Licensed in Iowa, New York, Washington and West Virginia

\*\* Also Licensed in New York

\*\*\*Licensed Only in New York

August 6, 2015

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** CFPB Bulletin 2015-03, PMI Cancellation and Termination Guidance

On August 4, 2015, the Consumer Financial Protection Bureau (CFPB) issued Compliance Bulletin 2015-03 ([click here](#)) to provide guidance regarding the cancellation and termination of private mortgage insurance (PMI) pursuant to the Homeowners Protection Act of 1998 codified in 12 USC 4901 *et seq.*(HPA), which was passed by Congress to address difficulties borrowers encountered in cancelling PMI when they had reached a certain level of equity in the property. The HPA provides specific cancellation and termination rights for borrowers and requirements that must be followed.

Bulletin 2015-03 summarizes the HPA provisions but does not create any new requirements. Bulletin 2015-03 also describes examples from CFPB’s supervisory experience of PMI cancellation and termination procedures that violate the HPA or create a substantial risk of noncompliance.

The following summary of Bulletin 2015-03 is not a complete description of its contents, and you are urged to read the entirety of the bulletin and the appropriate sections of the HBA cited therein.

*Borrower-Requested Cancellation*

A borrower initiates cancellation of PMI coverage by a written request to the servicer. If the borrower meets certain requirements (noted below) on the cancellation date, PMI is cancelled on the cancellation date. If the borrower does not meet those requirements on the cancellation date, PMI is canceled at a later date once the borrower meets the specified requirements. At the option of the borrower, the cancellation date is 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 date on which the principal balance of the mortgage reaches 80 percent of the original value of the property based on actual payments. 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.

The borrower must also meet the following requirements on the cancellation date:

- the borrower must have a good payment history;
- the borrower must be current on the mortgage;
- the borrower must satisfy any mortgage holder requirement for certification that the borrower’s equity in the property is not subject to a subordinate lien; and
- the borrower must satisfy any mortgage holder requirement for evidence (of a type established in advance and made known to the borrower – *e.g.*, a current appraisal) that the property’s value has not declined below the original value.

### *Automatic Termination*

In addition to borrower-requested cancellation discussed above, if the borrower is current on the mortgage, PMI must automatically be terminated on the termination date, which is the date on which the principal balance of the mortgage is first *scheduled* to reach 78 percent of the original value of the property (regardless of the outstanding balance of the mortgage on that date). If the borrower is not current on the mortgage on the termination date, the PMI automatically terminates on the first day of the first month beginning after the date that the borrower becomes current on the mortgage. 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 (the automatic termination date is not dependent on fluctuations in property value). Also, because current value is not a factor in determining the termination date, a borrower may not be required to pay for a property valuation nor may a mortgage holder require evidence of the property's current value as a condition of automatic termination of PMI. In addition, unlike the borrower-requested cancellation described above, a borrower cannot advance the automatic termination date by making additional payments to lower the principal balance of the mortgage.

### *Final Termination*

If PMI is not terminated by borrower-requested cancellation or automatic termination, PMI cannot be imposed beyond the first day of the month following the date that is the midpoint of the amortization period of the mortgage if, on that date, the borrower is current on the mortgage. 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 on the date that completes the amortization period – *e.g.*, for a 30-year mortgage loan, the midpoint of the amortization period would be the first day of the month following the 180th payment. Note that because the HPA applies only to residential mortgage loans consummated on or after July 29, 1999, 30-year mortgage loans would not have started becoming eligible for final PMI termination until August 2014.

### *PMI Refunds*

The HPA prohibits the collection of 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 mortgage holder for PMI cancellation. When unearned PMI premiums are collected, such unearned premiums must be returned to the borrower no later than 45 days after the termination or cancellation of the borrower's PMI coverage.

### *Annual Disclosures*

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.

### *Investor Guidelines*

The bulletin advises that Fannie Mae, Freddie Mac and other investors often have their own internal PMI cancellation guidelines containing provisions that vary from the HPA - for example, investor guidelines for PMI cancellation using loan to value calculations based on the current value of the property instead of the original value of the property required by the HPA, or guidelines that require a seasoning requirement for the mortgage before a borrower may request cancellation or be eligible for automatic PMI termination (the HPA does not have a seasoning requirement) - and that these investor guidelines cannot restrict the PMI cancellation and termination rights the HPA provides to borrowers.

In addition to the PMI cancellation and termination examples that violate the HPA described in Bulletin 2015-03, the CFPB's press release announcing the publication of Bulletin 2015-03 states that it has also discussed a number of HPA violations in its Summer 2013, Winter 2013, and Summer 2015 Supervisory Highlights:

- Summer 2013 Supervisory Highlights, [click here](#), see page 13;
- Winter 2013 Supervisory Highlights, [click here](#), see page 7; and
- Summer 2015 Supervisory Highlights, [click here](#), see pages 19 and 20.

This memorandum is not a complete description of the contents of Bulletin 2015-03, and you are urged to read the entirety of the bulletin and the appropriate sections of the HBA cited therein.

**This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.**