

## FREQUENTLY ASKED QUESTIONS:

# MI Cancellation Under the HPA and Refundable vs. Non-Refundable Premium



Among other notice and disclosure requirements, the Homeowners Protection Act of 1998 (“HPA,” or the “Act”) requires lenders to cancel mortgage insurance (MI) and refund the unearned premium under certain circumstances. Arch MI recognizes the importance of properly canceling MI and refunding the unearned premium in accordance with the HPA and is providing the following information to help its MI partners with their compliance efforts. Any questions from a borrower about a specific loan and its eligibility for cancellation under the Act should be directed to the loan servicer.

**LEGAL DISCLAIMER:** Arch MI believes the information contained in this publication to be accurate as of Jan. 1, 2018; however, this information is not intended to be legal advice, and any person subject to the HPA should seek advice from their legal counsel to assure proper compliance. Arch MI is providing this information without any warranties, expressed or implied, and shall not be liable for any damages due to any person’s reliance on the information.

### 1. When is a lender required to cancel or terminate MI under the HPA?

- A servicer must automatically “terminate” MI for **residential mortgage transactions** when the principal balance of the loan is first scheduled to reach 78% of the original value of the property and the borrower is current on the loan.
- A borrower in good standing<sup>1</sup> may initiate “cancellation” of MI coverage by written request to the servicer when the principal balance of the loan reaches (based on actual payments) or is first scheduled to reach 80% of the original value of the property, so long as 1) the borrower is current on the loan, 2) the value of the property has not declined below the original value and 3) the borrower’s equity in the property is not subject to a subordinate lien.
- If not canceled by borrower request or automatically terminated, final termination is required at the midpoint of the loan’s amortization period if, on that date, the borrower is current on the loan.

### 2. Does a lender have to terminate MI on second homes or investment properties?

- The HPA only applies to a residential mortgage transaction, which is defined under the Act as the purchase, initial construction or refinance of a loan

secured by a single-family primary residence. The HPA does not require termination of MI on second homes or investment properties (but see investor rules and state-specific rules below).

- For loans sold to Fannie Mae, the Fannie Mae Single Family Servicing Guide requires cancellation on both principal residences and second homes and also contains separate guidelines for cancellation with respect to investment properties. Other mortgage loan investors may have similar expanded MI cancellation requirements.
- For second homes and investment properties that are not subject to the HPA, even though the MI coverage may be cancelable due to expanded investor guidelines, the borrower will not be eligible for a refund unless the MI product is labeled as refundable. Thus, for non-refundable MI products that are canceled on second homes and investment properties, there is no refund due. If you are not sure if your MI product is refundable or not, please contact your servicer.
- Finally, “protected” state law may provide greater protections than those available under the HPA. While the HPA generally preempts state law, the cancellation laws of eight states were deemed “protected” under the

Act. Under this provision, a state law that provides equal or greater protection to a borrower (by requiring the termination of MI either at an earlier time or at a higher mortgage principal balance than the federal standard) is considered a “protected state law” and will continue to be valid to the extent it is not inconsistent with the HPA. Any provisions of state law that are inconsistent with the federal statute are superseded. One example is the New York cancellation law<sup>2</sup> that provides broader protection and requires cancellation on an “authorized real estate security,” which includes both primary and secondary residences.

### **3. Does lender-paid MI (“LPMI”) have to be canceled?**

- No, LPMI does not have to be canceled under the Act. The HPA only requires the disclosure of LPMI, which must state, among other things, that LPMI cannot be canceled by the borrower and that LPMI typically carries a higher interest rate than borrower-paid MI.

### **4. When the MI coverage is canceled or terminated on a loan due to HPA requirements, does the MI company have to refund any unearned premium?**

- Yes. The primary obligation imposed upon mortgage guaranty insurance companies under the Act is to refund any unearned premium to the insured party (lender/servicer) within 30 days after notification of cancellation or termination. The lender/servicer must refund any such unearned premiums to the borrower within 45 days after cancellation or termination.

### **5. How does the HPA apply to MI products labeled as “refundable” or “non-refundable” borrower-paid single premium plans?**

- The HPA applies equally to such plans without regard to the product label. The HPA requires borrower-paid MI to be canceled or terminated as described in FAQ #1 above. For a borrower-requested cancellation or an automatic termination that is triggered by the HPA, the mortgage insurer is required to refund any unearned premium, regardless of whether the premium plan is titled “refundable” or “non-refundable.”
- If the borrower-paid MI is canceled due to any reason other than the requirements of the HPA as outlined above (for example, due to a refinance or payoff that results in full satisfaction of the original loan or due to expanded investor MI cancellation rights), then such cancellation was not triggered by the HPA and the label of the product would determine whether a refund is due. There will be a refund under a “refundable” premium plan in accordance with that product’s published refund schedule and there will be no refund under the “non-refundable” plan. All applicable refund schedules are published on our website at [archmi.com](http://archmi.com). To determine the amount of unearned premium refund for an insured loan canceled due to HPA, please contact our Policy Servicing department at [policy servicing@archmi.com](mailto:policy servicing@archmi.com) or 877-642-4642 (Option 3).

<sup>1</sup> A borrower is in good standing if there are no 0x60 late payments within the first 12 months of the last 24 months prior to the later of the cancellation date or the date that the borrower requests cancellation, and no 0x30 late payments within months 13–24.

<sup>2</sup> See NY Ins. Section 6503(d).