

# How Mortgage Insurance is Treated under TRID (TILA-RESPA Integrated Disclosures)

## Questions and Answers from Benjamin Olson of Buckley Sandler

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The following are questions regarding the treatment of mortgage insurance premiums under the TRID rules that Arch MI recently posed to Benjamin K. Olson, a partner at the Buckley Sandler law firm. Mr. Olson is a former CFPB Deputy Assistant Director who led the CFPB's development of proposed rules and forms integrating TILA and RESPA disclosures. This discussion is provided for informational purposes only and may not be relied on as legal advice.

**Q1: If the Arch MI EZ Monthly MI premium, which is paid in arrears, changes after the Loan Estimate is sent to a borrower, does the lender have an obligation to send a revised Loan Estimate?**

A1: Generally, no. It is my understanding that two things may occur at consummation of the loan when an EZ Monthly mortgage insurance premium program is selected in connection with a loan:

- (1) The borrower will be required to make an initial payment into an escrow account at consummation; or
- (2) No payment will be made until after consummation.

I know there has been some confusion about the word “consummation” so I will briefly explain it. Consummation as used in the TRID rules means the time that a consumer becomes contractually obligated on a credit transaction. See 12 C.F.R. § 1026.2(a)(13). When the consumer becomes contractually obligated is a matter of state law so, while it will often be the same date as closing, it may not occur until a later date (such as the funding date) in some states See Comment 2(a)(13)-1.

If the borrower will make an initial payment into escrow at closing to pay for future EZ Monthly mortgage insurance premiums, then the deposit made at closing must be reflected in section G, “Initial Escrow Payment at Closing,” on the Loan Estimate and Closing Disclosure. A change in the disclosed amount before consummation does not require a revised disclosure. However, if a revised disclosure is issued for other reasons (such as to reset tolerances based on a valid changed circumstance), the estimate must be updated.

If no payment will be due until after consummation, the mortgage insurance premiums should not be disclosed as a closing cost on page 2 of the Loan Estimate or Closing Disclosure. Therefore, if the cost of the insurance changes, there is no disclosure to revise.

In either case, the EZ Monthly mortgage insurance premium would be disclosed in its own line in the Projected Payments table on page 1 of the Loan Estimate and Closing Disclosure. A change in this amount does not require a new disclosure but, when a new disclosure is provided for another reason, the monthly premium must be updated.

**Q2: What is a 0% tolerance cost under the TRID rules?**

A2: For purposes of mortgage insurance, if the mortgage insurance is paid through a single upfront premium at consummation, then the estimated cost of that premium is subject to 0% tolerance. Similarly, if the borrower is required to make a monthly or annual premium payment at or before consummation and the premiums are not escrowed, then that payment amount must be disclosed on the Loan Estimate and Closing Disclosure and it is subject to 0% tolerance.

**Q3: What's the difference between a 0% tolerance cost and a cost that falls in the no percentage limit category?**

A3: If a cost is subject to 0% tolerance, the estimated cost provided on the Loan Estimate cannot increase unless a permitted change occurs. If a cost falls in the no tolerance category, it need only be disclosed based on the "best information reasonably available." The cost of that service may increase by any amount even after the Loan Estimate is provided as long as the initial disclosure of that cost is based and any re-disclosure is based on the best information reasonably available.

**Q4: If the creditor is providing a revised Loan Estimate because an unrelated cost has changed, does the creditor need to re-disclose a changed Arch EZ Monthly MI premium rate?**

A4: Yes. You will need to update the Projected Payments table on page 1 and, if the premium will be paid into escrow at consummation, the escrow disclosure on page 2.

**Q5: Why isn't the premium for Arch MI's borrower paid EZ Monthly mortgage insurance products considered a 0% tolerance cost under the TRID rules?**

A5: Because premiums are only subject to tolerances if they are paid at or before consummation. EZ Monthly premiums are paid at consummation if the lender requires an initial escrow payment at consummation, and the rule clearly states that "amounts placed into escrow, impound, reserve, or similar account" are not subject to tolerances. See 12 C.F.R. § 1026.19(e)(3)(iii)(C).

**Q6: Is this just your interpretation of an ambiguous regulation? Is it possible that the CFPB or another regulator or a court would take the position that Arch MI's borrower paid EZ Monthly premiums are 0% tolerance costs?**

A6: We do not believe there is any risk that the CFPB, another regulator, or a court would conclude that mortgage insurance premiums reflected in the Projected Payments table or made into an escrow account are subject to 0% tolerances.

**Q7: Are there mortgage insurance products that, unlike Arch EZ Monthly, would require that the lender send a new Loan Estimate just because the premium rate has changed?**

A7: Yes. Examples include mortgage insurance programs that are paid for with a single upfront premium and those that require upfront payment of a monthly or annual premium that is not escrowed. Those types of programs would require re-disclosure if the premium increased, which would only be permitted if there was a "permitted change" under the TRID rules.

**Q8: What is the definition of a "permitted change" under the TRID rules?**

A8: When a fee falls into the 0% tolerance category, a "permitted change" must occur before the estimated cost of that fee may increase. The regulation lists five types of permitted changes in 12 C.F.R. § 1026.19(e)(3)(iv) that should be familiar to anyone who works with RESPA today. Specifically, a permitted change occurs if:

- (1) A changed circumstance affecting eligibility or settlement charges occurs. This applies if one of the following occurs:
  - a. An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
  - b. Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate was inaccurate or changed after the Loan Estimate was provided; or
  - c. New information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate;
- (2) The borrower requests revisions to the credit terms or the settlement that causes an estimated charge to increase;
- (3) The discount points, loan originator charges, and loan originator credits change because the interest rate was not locked when the Loan Estimate was provided;
- (4) The Loan Estimate expires because the consumer did not indicate an intent to proceed with the transaction within 10 business days after the Loan Estimate was provided; or
- (5) For new construction loans where the creditor reasonably expects that settlement will occur more than 60 days after the initial Loan Estimate is provided, only if the original Loan Estimate states clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures.

**Q9: What are some examples of the kinds of “permitted changes” that would permit the re-disclosure of the mortgage insurance premium rate on products other than Arch MI’s EZ Monthly?**

A9: Examples could include a borrower’s request to change the loan amount or the mortgage insurance product or receipt of information showing that the borrower no longer qualifies for the product that was originally quoted.

**Q10: If the creditor makes a mistake that causes the MI premium to be incorrect on the Loan Estimate, will the creditor be able to pass the higher premium on to the borrower?**

A10: The tolerance rules apply to amounts charged at or before consummation and require disclosures of those amounts to be based on the “best information reasonably available to the creditor at the time the disclosure is provided to the consumer.” Comment 19(e)(1)(i)-1; see also comments 37-1 and 38-3.

Therefore, if you made a mistake and did not provide the MI estimate based on the best information reasonably available at the time, you may not be able to increase that upfront premium. For non-escrowed upfront premiums, the zero tolerance applies and the premium cannot increase absent a “changed circumstance” or other permitted change. Realizing that you made a mistake generally will not be a changed circumstance.

For escrowed upfront premiums that are not subject to tolerances, you may be able to increase the premium but you have some risk that your initial disclosure was inconsistent with the “best information reasonably available” standard.

Similarly, the tolerances generally do not apply to amounts charged after consummation so you are not bound to honor the mistaken premium for the life of the loan even though it was disclosed in the Projected Payments table, but there is still the risk that your initial disclosure did not meet the “best information reasonably available” standard.

**Q11: Does Lender Paid Mortgage Insurance ever require a re-disclosure if the MI rate changes after the Loan Estimate is sent?**

A11: No. If the terms of the legal obligation clearly provide that the lender will pay for the mortgage insurance, then the cost of lender paid mortgage insurance does not need to be disclosed on the Loan Estimate. Instead, it will only be disclosed on the Closing Disclosure as follows:

Single premium paid at consummation must be disclosed on page 2, section B. “Services Borrower Did Not Shop For” as “Paid by Others.”

Monthly or annual premium payment made at consummation disclosed on page 2, section F. “Prepays” as “Paid by Others.”

**Q12: If a loan broker provided the Loan Estimate to the borrower using an MI premium rate from another company, but the creditor wants to use Arch MI for the mortgage insurance, does the creditor have to re-disclose the cost of the mortgage insurance?**

A12: It depends on how the original premium was disclosed and how the premiums purchased through Arch will be paid.

For example, if the mortgage insurance originally disclosed would have been paid through a single upfront premium, then it would have been disclosed in section B. “Services You Cannot Shop For” and it would have been subject to 0% tolerance. If you decide to instead use the EZ Monthly product where no premiums will be paid in advance or will be paid into escrow, then you are not required to issue a revised Loan Estimate.

However, if you later issue a revised Loan Estimate for other reasons, then you should remove the upfront mortgage insurance premiums estimated in section B. “Services You Cannot Shop For,” add the monthly premiums to the Projected Payments table, and, if an upfront EZ Monthly premium will be paid into escrow at consummation, add it to section G. “Initial Escrow Payment at Closing.”

**Q13: If the creditor initially sends out a Loan Estimate for an EZ Monthly product and then the borrower opts for a single premium BPMI product, or another 0% tolerance product, does the creditor need to redisclose?**

A13: Yes. You will need to issue a revised Loan Estimate within three business days of receiving “information sufficient to establish” that the borrower has opted for the single premium borrower paid mortgage insurance product. The estimated cost of that product should be disclosed in section B. “Services You Cannot Shop For.”

**Q14: What if the creditor initially sends out a Loan Estimate for a single premium BPMI product, or another 0% tolerance product, and the borrower opts for an EZ Monthly product?**

A14: Because a 0% tolerance charge is being replaced with a charge that is not subject to tolerance, you are not required to issue a revised Loan Estimate. However, if you later issue a revised Loan Estimate for other reasons or when you issue the Closing Disclosure, you should remove the upfront mortgage insurance premiums estimated in section B. “Services You Cannot Shop For,” add the monthly premiums to the Projected Payments table, and, if an upfront EZ Monthly premium will be paid into escrow at consummation, add it to section G. “Initial Escrow Payment at Closing.”

**Q15: If a loan broker gets an accurate quote from another mortgage insurer for a monthly MI product paid in arrears, but the lender uses an Arch MI EZ Monthly premium rate which results in a different premium for the loan, does the lender need to re-disclose the MI premium?**

A15: Because a wholesaler is bound by the broker's Loan Estimate if it accepts the loan, the answer depends on how the broker disclosed mortgage insurance. The fact that the lender is determined after the initial Loan Estimate was provided is generally not a permitted change justifying an increase in a 0% tolerance charge like non-escrowed mortgage insurance premiums paid at consummation.

However, because the EZ Monthly premiums are either not paid at consummation or are paid into escrow at consummation, the effect of switching to EZ Monthly would be to eliminate a 0% tolerance charge if such a charge was disclosed initially. Therefore, there does not seem to be a scenario in which the switch to EZ Monthly would require redisclosure. However, as discussed previously, the lender would need to update the mortgage insurance disclosures on the next Loan Estimate or on the Closing Disclosure.

**Q 16: If an Arch MI EZ Monthly MI premium changes after the Loan Estimate is sent to the borrower and that change causes the APR to increase, does the lender have an obligation to send a revised loan Estimate?**

A16: Generally, no. Assuming the borrower is making an initial payment into escrow at closing to pay for future EZ Monthly mortgage insurance premiums or is not making a mortgage insurance payment until after the close, an increase in the APR as a result of an MI increase will not require an exception to the tolerance requirements or a revised Loan Estimate. Revised Loan Estimates are required for resetting fee tolerances and do not apply to APR increases. Instead, it is sufficient to disclose the new APR on the initial Closing Disclosure. If, however, the Loan Estimate is going to be reissued for another reason, then the new APR must be disclosed. Of course, if the APR increases for any reason after the Closing Disclosure is issued and the new APR is more than 1/8 of a point (1/4 for an irregular transaction) higher than the APR disclosed in the prior Closing Disclosure, a requirement for a new Closing Disclosure and a new 3-day waiting period will be triggered.