CFPB FACTSHEET – LOAN ESTIMATES AND CLOSING DISCLOSURES FOR “ASSUMPTIONS”

The Consumer Financial Protection Bureau (CFPB) recently issued a factsheet addressing whether a Loan Estimate and Closing Disclosure are required under the TILA-RESPA Integrated Disclosure Rule (TRID Rule) for a specific group of transactions. It addresses whether these disclosures are required for a transaction: (1) in which a new consumer is being added or substituted as an obligor on an existing consumer credit transaction; (2) that is a closed-end consumer credit transaction secured by real property or a cooperative unit; and (3) that is not a reverse mortgage subject to 12 CFR 1026.33. The flowchart, found at the end of this Update, may be used to help determine if a Loan Estimate and Closing Disclosure are required for such a transaction.

To ascertain whether a creditor must provide a Loan Estimate and Closing Disclosure for a transaction that satisfies the criteria discussed above, one must determine if the transaction is an “assumption” as that term is specifically defined in Regulation Z, 12 CFR 1026.20(b). An assumption under § 1026.20(b) occurs when a creditor expressly agrees in writing to accept a new consumer as a primary obligor on an existing residential mortgage transaction. Generally, to satisfy this particular definition of assumption, a transaction must meet the following three elements:

1. Include the creditor’s express acceptance of the new consumer as a primary obligor. The creditor must accept the new consumer as a primary obligor. The retention of the original consumer as an obligor in some capacity does not prevent the change from being an assumption under § 1026.20(b), provided the new consumer becomes a primary obligor. However, the mere addition of a guarantor to an obligation for which the original consumer remains primarily liable does not give rise to an assumption under § 1026.20(b).

Furthermore, the creditor’s acceptance of the new consumer as a primary obligor must be express. For that acceptance to be express, the creditor must unequivocally agree to accept the new consumer as a primary obligor. The following events are not construed to be express acceptance of the new consumer: (a) approval of creditworthiness; (b) notification of a change in records; (c) mailing of a coupon book to the new consumer; and (d) acceptance of payments from the new consumer.

In addition, note that if the original consumer is retained as an obligor, but neither the original consumer nor the new consumer is designated as the primary obligor, the
Regulation Z official interpretations provide that an assumption nonetheless exists for purposes of § 1026.20(b) if the creditor accepts payment from the new consumer.

2. **Include the creditor’s express acceptance in a written agreement.** In order for a transaction to be an assumption under § 1026.20(b), it must include a written agreement and that written agreement must include the creditor’s express acceptance of the new consumer. Other than expressly accepting the new consumer as a primary obligor, the written agreement does not need to change any terms of the existing obligation.

3. **Be a “residential mortgage transaction” as to the new consumer.** A “residential mortgage transaction” is a transaction: (a) in which a security interest is created or retained in the new consumer’s principal dwelling; and (b) which finances the acquisition or initial construction of the new consumer’s principal dwelling. For purposes of determining whether the transaction is a residential mortgage transaction, the creditor must look to the new consumer, rather than the original consumer. Thus, the creditor must determine if the transaction involves the new consumer’s principal dwelling and whether the new consumer is financing the acquisition or initial construction of that dwelling.

The creditor must be taking or retaining a security interest in the new consumer’s principal dwelling, and the new consumer must be financing the acquisition or initial construction of his or her principal dwelling. For purposes of determining whether the transaction is a residential mortgage transaction, it is not relevant whether the transaction involved the original consumer’s principal dwelling. The transaction must be secured by and finance the acquisition or initial construction of the new consumer’s principal dwelling in order to be a residential mortgage transaction. Thus, if the transaction is only secured by the new consumer’s second or vacation home or other property that the new consumer does not use as a principal dwelling, the transaction is not a residential mortgage transaction, even if the dwelling securing the transaction is or was the original consumer’s principal dwelling.

Moreover, a residential mortgage transaction does not arise if the new consumer is not financing the acquisition or initial construction of his or her principal dwelling. Thus, even if the transaction is secured by the new consumer’s principal dwelling, a creditor must determine if the new consumer previously purchased or acquired some interest in the principal dwelling. If the new consumer takes on a debt obligation secured by a dwelling in which the new consumer previously had some interest (even if not full legal title), the transaction is not a residential mortgage transaction. For example, a residential mortgage transaction does not occur when a successor takes on a debt obligation that is secured by a dwelling in which the successor previously acquired an interest. Although these types of transactions may be commonly referred to as assumptions, they are not assumptions under § 1026.20(b) because they are not residential mortgage transactions as to the new consumer.

If the transaction is an assumption under § 1026.20(b), the creditor must provide a Loan Estimate and Closing Disclosure, unless the transaction is otherwise exempt from the requirements to provide a Loan Estimate and Closing Disclosure. For example, certain housing assistance loans are otherwise exempt from the requirements to provide a Loan Estimate and Closing Disclosure under 12 CFR 1026.3(h).
The creditor must make the disclosures in the Loan Estimate and Closing Disclosure based on the remaining obligation. For example, the amount financed is the remaining principal balance plus any arrearages or other accrued charges from the original consumer credit transaction. Similarly, in determining the amount of the finance charge and the annual percentage rate to be disclosed, the creditor should disregard any prepaid finance charges paid by the original obligor, but must include in the finance charge any prepaid finance charge imposed in connection with the assumption transaction. If the creditor requires the new consumer to pay any charges as a condition of the assumption, those sums are prepaid finance charges as to that consumer, unless exempt from the finance charge under 12 CFR 1026.4.

If a creditor adds a new consumer to an existing consumer credit transaction (regardless of whether that event triggers the requirement to provide a Loan Estimate and Closing Disclosure), the extension of credit remains a consumer credit transaction under Regulation Z. Therefore, the creditor, assignee, or servicer must comply with any ongoing obligations pertaining to the consumer credit transaction, such as servicing-related requirements. Additionally, even if the event does not trigger the requirement to provide a Loan Estimate and Closing Disclosure, it may trigger other disclosure requirements under TILA or RESPA.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.
Does the transaction include the creditor’s express acceptance of a new consumer as a primary obligor? 12 CFR 1026.20(b).

- Yes

  Is the creditor’s express acceptance of the new consumer as a primary obligor set forth in a written agreement? 12 CFR 1026.20(b).

  - No

  - Yes

    As part of the transaction, is the creditor creating or retaining a security interest in the new consumer’s principal dwelling (whether real or personal property)? 12 CFR 1026.2(a)(24); 20(b).

      - No

      - Yes

        As part of the transaction, is the new consumer financing the acquisition or initial construction of the new consumer’s principal dwelling (whether real or personal property)? 12 CFR 1026.2(a)(24); 20(b).

          - No

          - Yes

            Is the transaction exempt from the requirements to provide a Loan Estimate and Closing Disclosure? For example, is the transaction a housing assistance loan that is exempt under 12 CFR 1026.3(h) or was the finance charge originally imposed on the existing obligation an add-on or discount finance charge as described in 12 CFR 1026.20(b)?

              - Yes

              - No

A Loan Estimate and Closing Disclosure are not required for the transaction, but other disclosures may be required under TILA or RESPA.

The creditor must provide a Loan Estimate and Closing Disclosure to the new consumer.