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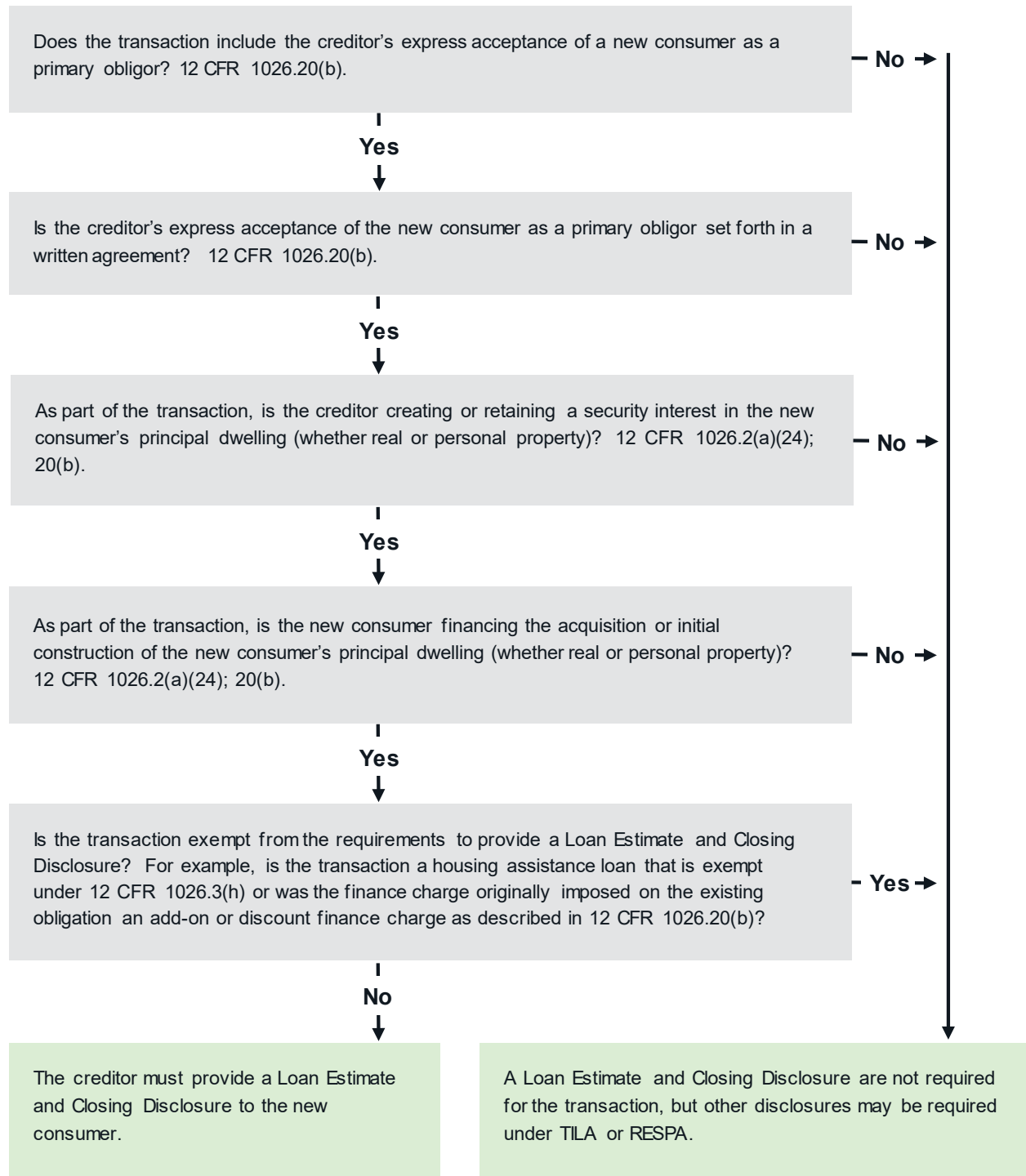
# Factsheet: Are Loan Estimates and Closing Disclosures Required for Assumptions?

Different industry stakeholders may use the term “assumption” to apply to a variety of transactions. This factsheet, however, addresses 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 scope is limited in this manner, in part, because Loan Estimates and Closing Disclosures are not required unless a transaction is a closed-end consumer credit transaction that is secured by real property or a cooperative unit and that is not a reverse mortgage subject to § 1026.33. 12 CFR 1026.19(e) and (f).

This factsheet consists of two parts: (1) a flowchart; and (2) a narrative discussion. The flowchart is a quick reference that highlights the major questions to be answered when determining if a Loan Estimate and Closing Disclosure are required for the assumption transactions described above. The narrative discussion provides general information that may be useful when determining if a Loan Estimate and Closing Disclosure are required, including information related to each of the major questions set forth in the flowchart.

Reviewing this factsheet is not a substitute for reviewing the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), Regulation Z, or its official interpretations (also known as the commentary). These statutes, Regulation Z, and its official interpretations are the definitive sources of information regarding their requirements.

This flowchart may be used to help determine if a Loan Estimate and Closing Disclosure 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.



This factsheet addresses whether a Loan Estimate and Closing Disclosure are required under the TILA-RESPA Integrated Disclosure Rule (TRID Rule) for certain transactions in which a new consumer is being added or substituted as an obligor on an existing consumer credit transaction.<sup>1</sup>

As a threshold matter, one must determine if the new transaction is otherwise within the TRID Rule's general scope of coverage. A Loan Estimate and Closing Disclosure are only required under the TRID Rule if a transaction is a closed-end consumer credit transaction secured by real property or a cooperative unit and is not a reverse mortgage subject to 12 CFR 1026.33, 12 CFR 1026.19(e) and (f).

The remainder of this factsheet discusses whether a Loan Estimate and Closing Disclosure are required for a transaction in which a new consumer is being added or substituted as an obligor on an existing consumer credit transaction and that is otherwise within the TRID Rule's general scope of coverage (*i.e.*, is a closed-end consumer credit transaction secured by real property or a cooperative unit, but is not a reverse mortgage subject to § 1026.33).

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. 12 CFR 1026.20(b). 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

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<sup>1</sup> Loan Estimates and Closing Disclosures are not required if the previous debtor was not a consumer. See Comment 20(b)-5, which explains that a transaction is only an assumption under § 1026.20(b) if the previous debtor was a consumer and the obligation is assumed by another consumer. An assumption under § 1026.20(b) does not occur, for example, when an individual takes over the obligation of a corporation. Comment 20(b)-5.

for which the original consumer remains primarily liable does not give rise to an assumption under § 1026.20(b). Comment 20(b)-4.

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. Comment 20(b)-3.

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. Comment 20(b)-4.

2. **Include the creditor's express acceptance in a written<sup>2</sup> 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. Comment 20(b)-1.i. Other than expressly accepting the new consumer as a primary obligor (as explained above), the written agreement does not need to change any terms of the existing obligation. Comment 20(b)-1.ii.
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. 12 CFR 1026.2(a)(24). 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

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<sup>2</sup> Regulation Z does not prohibit the "written agreement" from being in the form of an electronic record with an electronic signature. Generally, electronic signatures and electronic records are valid and enforceable if they meet certain criteria. See, for example, 15 U.S.C. 7001 *et seq.*

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. Comment 20(b)-2. See also comment 2(a)(24)-3.

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. Comment 2(a)(24)-5. For example, a residential mortgage transaction does not occur when a successor<sup>3</sup> 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. See 79 *Federal Register*

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<sup>3</sup> Generally, a successor is a person who receives legal interest in a property, typically by a transfer from a family member, by operation of law upon another's death, or under a divorce decree or separation agreement. See 79 *Federal Register* 41631, 41632 (July 17, 2014).

41631, 41633 (July 17, 2014) available at <http://www.govinfo.gov/content/pkg/FR-2014-07-17/pdf/2014-16780.pdf>.

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.<sup>4</sup> 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. Comment 20(b)-6.

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. See 79 *Federal Register* 41631, 41633 (July 17, 2014). 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. See, for example, 12 CFR 1024.5(b)(5); 6; 7; 8; 10; and 33(a) and 12 CFR 1026.18.

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<sup>4</sup> If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor may make abbreviated disclosures, as outlined in 12 CFR 1026.20(b)(1) through (5).