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May 15, 2019

To: Clients and Friends

From: David F. Dulock

Subject: Assumptions - Are Loan Estimates and Closing Disclosures Required?

On May 1, 2019, the Consumer Financial Protection Bureau (CFPB) published a Factsheet discussing whether Loan Estimates and Closing Disclosures are required for assumption transactions. The Factsheet is available on the CFPB's website, [click here](#).

The Factsheet address whether a Loan Estimate and Closing Disclosure are required for an assumption transaction defined by and subject to §1026.20(b) of Regulation Z, which provides, in pertinent part, that “[a]n assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a *primary obligor* on an existing residential mortgage transaction [and] [b]efore the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation.” The Factsheet states that a lender must first determine if the assumption is otherwise within the TRID Rule’s general scope of coverage because a Loan Estimate and Closing Disclosure are only required under the TRID Rule for an assumption 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 §1026.33.

To ascertain whether a creditor must provide a Loan Estimate and Closing Disclosure for a transaction that satisfies the above criteria, the Factsheet states that to satisfy §1026.20(b)’s definition of assumption, the transaction must be a residential mortgage transaction defined by §1026.2(a)(24) as to the new consumer and the creditor must expressly accept the new consumer as a primary obligor in a written agreement.

The Factsheet concludes with a caution that even if the transaction is not an assumption requiring 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.”

For a complete discussion of the Factsheet’s assumption requirements, please download and read the hyperlinked Factsheet issued by the CFPB.

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