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9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Thomas E. Black, Jr., P. C. \*

Calvin C. Mann, Jr., P. C.

Gregory S. Graham, P. C.

David F. Dulock

Diane M. Gleason

Benjamin R. Idziak \*\*

Shawn P. Black \*\*

Regina M. Uhl

Peter B. Idziak\*\*

Kathryn A. Williams

Of Counsel

David M. Tritter

\* Also Licensed in New York, Washington, West Virginia and Iowa

\*\* Also Licensed in New York

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Issues Proposed Amendments to Qualified Mortgage Points and Fees

Today the CFPB issued proposed amendments to the Qualified Mortgage points and fees requirement in §1026.43(e)(3) to permit, under limited circumstances, the refunding of excess points and fees within 120 days after closing in order for the loan to meet this Qualified Mortgage requirement (click here). The text of the proposed amendments and their proposed official interpretations are set out below:

(3) Limits on points and fees for qualified mortgages. (i) Except as provided in paragraph (e)(3)(iii) of this section, a covered transaction is not a qualified mortgage unless the transaction's total points and fees, as defined in §1026.32(b)(1), do not exceed:

\* \* \* \* \*

(iii) If the creditor or assignee determines after consummation that the total points and fees payable in connection with a loan exceed the applicable limit under paragraph (e)(3)(i) of this section, the loan is not precluded from being a qualified mortgage, provided:

(A) The creditor originated the loan in good faith as a qualified mortgage and the loan otherwise meets the requirements of paragraphs (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, as applicable;

(B) Within 120 days after consummation, the creditor or assignee refunds to the consumer the dollar amount by which the transaction's points and fees exceeded the applicable limit under paragraph (e)(3)(i) of this section at consummation; and

(C) The creditor or assignee, as applicable, maintains and follows policies and procedures for post-consummation review of loans and refunding to consumers amounts that exceed the applicable limit under paragraph (e)(3)(i) of this section.

Paragraph 43(e)(3)(iii).

1. Originated in good faith as a qualified mortgage. i. The following may be evidence that a creditor originated a loan in good faith as a qualified mortgage:

A. A creditor maintains and follows policies and procedures designed to ensure that points and fees are correctly calculated and do not exceed the applicable limit under §1026.43(e)(3)(i); or

B. The pricing for the loan is consistent with pricing on qualified mortgages originated contemporaneously by the same creditor.

ii. In contrast, the following may be evidence that a loan was not originated in good faith as a qualified mortgage:

A. A creditor does not maintain, or the creditor has, but does not follow, policies and procedures designed to ensure that points and fees are correctly calculated and do not exceed the applicable limit under §1026.43(e)(3)(i); or

B. The pricing for the loan is not consistent with pricing on qualified mortgages originated contemporaneously by the same creditor.

2. Policies and procedures for post-consummation review and refunding. A creditor or assignee satisfies §1026.43(e)(3)(iii)(C) if it maintains and follows policies and procedures for post-consummation quality control loan review and for curing (by providing a refund) errors in points and fees calculations that occur at or before consummation.

Once the proposal is published in the Federal Register, we will advise you by subsequent memorandum so that you will be able to submit comments on it to the CFPB.