On May 6, 2014, the Consumer Financial Protection Bureau (CFPB) published in the Federal Register several proposed amendments to the Ability-to-Repay Rule and the related Qualified Mortgage (QM) exemption. While two of the proposed amendments deal with nonprofit small lender and servicer exemptions that will likely not prove useful to our clients, the third is a QM points and fees post-closing cure proposal that will be important to our industry as a whole. The CFPB is also seeking comments on a possible post-closing cure for a violation of the QM 43% back-end debt-to-income ratio requirement. Comments are due to the CFPB on the proposal by June 5, 2014.

The CFPB admits that the QM points and fees calculation (3% cap on loans over $100,000) is ‘complex, and can involve the exercise of judgment that may lead to inadvertent errors,’ and refers to discount points, mortgage insurance premiums and loan originator compensation as fee types that can lead to errors in calculation. It also admits that repurchase risk for a loan found after closing to have points and fees exceeding the QM 3% limit may ‘increase the cost of credit for consumers.’ In our experience, investors that become aware of points and fees in excess of the applicable QM limit on a loan will simply refuse to purchase it or accept any cure post-closing.

The points-and-fees cure would be a new subsection of Reg Z, located at 1026.43(e)(3)(iii). The ‘cure’ would require three elements: first, that the lender originated the loan ‘in good faith’ as a QM loan, and the loan meets the other QM requirements, second, that the lender (or investor at the time) refunds the points-and-fees overage to the borrower within 120 days of closing, and third, that the lender or investor, as applicable, maintains and follows policies and procedures for post-closing loan review to ensure that refunds are made where necessary.
The proposed Staff Interpretations give two examples of evidence that a lender has met the ‘good faith’ requirement to be able to give a points-and-fees refund to cure a points-and-fees QM violation. First, the lender maintains policies and procedures designed to ensure that points and fees are correctly calculated and do not exceed applicable limits. Second, the pricing on the loan subject to the cure is ‘consistent with pricing on qualified mortgages originated contemporaneously by the same creditor.’

Curiously, the 120 days to cure a QM points-and-fees overage is longer than either the 30 days in which a title company or closing attorney can revise a HUD-1 after settlement under current RESPA requirements, or the 30- and 60-day periods in the Integrated Disclosures final rule to correct errors on the Closing Disclosure, which will replace the HUD-1 for most transactions effective August 1, 2015. Some investors may require a cure to be completed in these tighter time frames, so that the cure will be documented on a revised HUD-1 or Closing Disclosure. In any event, the implementation of this proposed rule as a final rule would be a huge improvement over the current state of affairs, where most investors will not permit a post-closing points-and-fees cure at any time after closing.

If you have any questions or comments concerning this Client Alert, please do not hesitate to contact:

**Eldon L. Youngblood**
Attorney
Phone: (214) 257-1701
Fax: (214) 257-1717
E-mail: eyoungblood@msyalaw.com
E-mail: eyoungblood@mcglinchey.com

Eldon L. Youngblood is an attorney in the firm’s Dallas office and focuses his practice on real estate finance matters, with emphasis on lender issues, mortgage banking and construction law.

**David J. Pederson**
Attorney
Phone: (214) 257-1705
Fax: (214) 257-1717
E-mail: dpederson@msyalaw.com
E-mail: dpederson@mcglinchey.com

David J. Pederson is an attorney in the firm’s Dallas office and focuses his practice on all aspects of residential mortgage banking, including multistate and federal compliance, licensing, loan documentation and servicing.
Bradley N. Cope
Attorney

Phone: (214) 257-1702
Fax: (214) 257-1717
E-mail: bcope@msyalaw.com
bcope@mcglinchey.com

Bradley N. Cope is an attorney in the firm’s Dallas office and focuses his practice on consumer financial services, including all aspects of residential mortgage banking, multistate and federal compliance, to litigation and claims management.*

For assistance with your mortgage documentation needs, you may also contact:

Vicki R. Murphy *
Executive Director

Phone: (214) 257-1820
Fax: (214) 257-1717
E-mail: vmurphy@msyalaw.com

Vicki Murphy is Executive Director for McGlinchey Stafford and Youngblood & Associates, LLP. She has worked in client services for law firms representing residential mortgage lenders for over 18 years. She has spent her career working with lawyers and residential mortgage lenders to develop operational and closing services and software to maximize lender efficiencies. *Ms. Murphy is not licensed to practice law.

*Not Certified by the Texas Board of Legal Specialization

McGlinchey Stafford and Youngblood & Associates, LLP is a national mortgage compliance firm, offering outsourcing of mortgage banking functions that include closing document preparation, funding and shipping services for the Mortgage Banking Industry from coast to coast. For more information about the attorneys and services of McGlinchey Stafford and Youngblood & Associates, LLP or our affiliated full-service law firm, McGlinchey Stafford PLLC, please visit our websites at www.msyalaw.com and www.mcglinchey.com

As our valued partners and clients, please feel free to pass on this alert to your other associates and your clients as you deem applicable. We will be happy to also include them on our permanent distribution list – just let us know.

This Client Alert is provided as a service to clients of McGlinchey Stafford and Youngblood & Associates, LLP. It is not intended as general legal advice and is not to be relied upon by third parties.