

DODD-FRANK ACT SUMMARY FOR SMALL INVESTORS, JANUARY 2014

I. DODD-FRANK ACT, SMALL CREDITOR ABILITY TO REPAY

A. SMALL CREDITOR QUALIFIED MORTGAGES (“QM”):¹

1. SMALL CREDITOR QUALIFIED MORTGAGE (SAFE HARBOR DEFENSE).²
2. SMALL CREDITOR BALLOON PAYMENT QUALIFIED MORTGAGE ISSUED 01/2014 TO 01/2016 (SAFE HARBOR DEFENSE).²
3. “HIGHER-PRICED” SMALL CREDITOR QUALIFIED MORTGAGE OR SMALL CREDITOR BALLOON PAYMENT QUALIFIED MORTGAGE (REBUTTABLE PRESUMPTION DEFENSE).³

B. SMALL CREDITOR QUALIFIED MORTGAGE REQUIREMENTS (#1 - #11):

1. NO NEGATIVE AMORTIZATION.
2. NO INTEREST-ONLY PAYMENTS.
3. FULLY AMORTIZED EQUAL PAYMENTS AT MAXIMUM RATE OF LOAN FOR \geq FIVE YEARS.
4. 30-YEAR TERM OR LESS.
5. “CONSIDERATION” OF MONTHLY LOAN OBLIGATION.
6. “CONSIDERATION AND VERIFICATION” OF INCOME, ASSETS, DEBTS.
7. “CONSIDERATION” OF DEBT-TO-INCOME RATIO (“DTI”).
8. “CONSIDERATION” OF CAPACITY TO REPAY.
9. ORIGINATOR FEE COMPLIANCE.⁴
10. PREPAYMENT PENALTY COMPLIANCE.⁵
11. ESCROW COMPLIANCE FOR TAXES/INSURANCE.⁶

¹ “Small Creditor Qualified Mortgages” are not required to comply with all “Ability to Repay” (“ATR”) standards of Dodd-Frank. “Small Creditors” have assets less than \$2 Billion and originated less than 500 residential mortgage loans during the previous calendar year. Must only convey to Small Creditors.

² “Safe Harbor Defense” for Qualified Mortgage conclusively establishes that the originator complied with the Ability to Repay standards. Three-year statute of limitations for affirmative noncompliance ATR claims may include up to three years of fees and legal costs. Provides unlimited defense to foreclosure.

³ “Higher Priced” Small Creditor Qualified Mortgage – Interest exceeds “Average Prime Offer Rate” (“APOR” shown at <http://www.ffiec.gov/ratespread/newcalc.aspx>) \geq 3.5%. Safe Harbor defense protection is lost. Rebuttable Presumption Defense of compliance with ATR can be challenged.

⁴ Originator Fees must include maximum prepayment penalty fee, origination fees, insurance premiums, etc., but exclude outside service fees for attorneys, closers, escrow, survey, notary, appraisal, or title insurance. Maximum Originator Fees: \geq \$100K at 3%; \$60K-\$100K at 3K; \$20K-\$60K at 5%; \$12.5K-\$20K at 1K; and, \leq \$12.5K at 8%.

⁵ Prepayment Penalty Fees limited to: \leq 2% of loan balance in first two years; \leq 1% of loan balance in third year; none for remaining loan term. Originator must offer alternative loan.

⁶ Escrow Requirements under Truth-in-Lending Act (“TILA”) “Higher-Priced” Mortgage Loan Escrow Amendment for principal residences (non-condominiums), when the interest exceeds “APOR” by \geq 1.5%; or, interest on “Jumbo Loan” above Freddie Mac limit exceeds “APOR” by \geq 2.5%; No exemption for Qualified Mortgages.

**C. SMALL CREDITOR BALLOON PAYMENT QUALIFIED MORTGAGE ISSUED 01/2014 TO 01/2016;
ADDITIONAL REQUIREMENTS (#12 AND #13):**

12. MINIMUM FIVE-YEAR TERM.
13. "DETERMINATION" OF CAPACITY TO REPAY MONTHLY OBLIGATIONS.

D. ABILITY TO REPAY "VERIFIED" SOURCE REQUIREMENTS:

1. INCOME OR ASSETS. EMPLOYMENT STATUS.
2. MONTHLY MORTGAGE PAYMENT.
3. MONTHLY PAYMENTS FOR SUBORDINATE LOANS.
4. RELATED PROPERTY PAYMENT OBLIGATIONS.
5. DEBTS, ALIMONY, CHILD SUPPORT OBLIGATIONS.
6. MONTHLY DEBT-TO-INCOME RATIO OF \leq 43%.
7. CREDIT HISTORY.
8. EXEMPTION: QUALIFIED MORTGAGES NOT HELD TO 43% DTI STANDARD

II. REGULATIONS REVISED DUE TO DODD-FRANK ACT AMENDMENTS

**E. HOME OWNERSHIP AND EQUITY PROTECTION ACT ("HOEPA") "HIGH-COST" MORTGAGE
AMENDMENT.**

AMENDMENT APPLICATION:

1. LOAN SECURED BY PRINCIPAL RESIDENCE.
2. INTEREST "APOR" \geq 6.5% FOR FIRST-LIEN; \geq 8.5% FOR SUBORDINATE-LIEN.
3. ORIGINATOR FEES FOR LOAN \geq \$20K = \geq 5%; FOR LOAN \leq \$20K = \geq 8% OR \$1K.
4. PREPAYMENT PENALTY IS \geq 2% OF LOAN PREPAID OR CHARGED AFTER THIRD YEAR.
5. EXEMPTIONS: INITIAL CONSTRUCTION LOANS, REVERSE MORTGAGES, NO EXEMPTION FOR QUALIFIED MORTGAGES.

AMENDMENT REQUIREMENTS:

1. ORIGINATOR DISCLOSURES.
2. PROHIBITION OF SPECIFIED LOAN TERMS.
3. FEE RESTRICTIONS.
4. ABILITY TO REPAY COMPLIANCE.
5. PRE-LOAN COUNSELING.

F. TRUTH-IN-LENDING ACT (“TILA”) “HIGHER-PRICED” MORTGAGE APPRAISAL AMENDMENT.

AMENDMENT APPLICATION:

1. LOAN SECURED BY PRINCIPAL RESIDENCE.
2. INTEREST EXCEEDS “APOR” BY $\geq 1.5\%$.
3. INTEREST ON “JUMBO LOAN” ABOVE FREDDIE MAC LIMITS EXCEEDS “APOR” BY $\geq 2.5\%$.
4. EXEMPTIONS: QUALIFIED MORTGAGES, REVERSE MORTGAGES, CONSTRUCTION LOANS, BRIDGE LOANS

AMENDMENT REQUIREMENTS:

1. ONE/TWO WRITTEN APPRAISALS.
2. LICENSED APPRAISER.
3. INTERIOR INSPECTION.
4. NOTICE OF APPRAISAL.
5. APPRAISAL CONCLUDED THREE DAYS PRIOR TO CLOSING.

G. REAL ESTATE SETTLEMENT AND PROCEDURES ACT (“RESPA”) “SMALL SERVICER” AMENDMENT.

AMENDMENT APPLICATION:

1. RESIDENTIAL MORTGAGE SERVICER.
2. SERVICES 5,000 LOANS OWNED OR ORIGINATED/YEAR.
3. FEDERAL HOUSING FINANCE AGENCY.
4. EXEMPTIONS: NO EXEMPTION FOR QUALIFIED MORTGAGES

AMENDMENT REQUIREMENTS:

1. ADJUSTABLE RATE MORTGAGE NOTICE.
2. CREDIT AND PAYOFF STATEMENTS.
3. FORCE-PLACE INSURANCE NOTICE.
4. ERROR RESOLUTION INFORMATION.
5. LOSS MITIGATION PROVISION FOR 120-DAY POST-DEFAULT FORECLOSURE PROCEEDING.⁷
6. AMENDMENT REQUIREMENTS EXCLUDED FOR SMALL SERVICER: CONTINUITY OF CONTACT, EARLY INTERVENTION, PERIODIC STATEMENT, GENERAL SERVICING POLICIES, MAJORITY OF LOSS MITIGATION.

⁷ Servicer cannot send notice of foreclosure action prior to 120 days after default. Requirement does not pertain to a violation of a due-on-sale provision or when the servicer is joining a foreclosure action initiated by a subordinate lienholder. Texas initial default and acceleration notices permitted prior to 120-day period. An abandoned property loses its “residence” status and the rule’s delay requirement.

H. EQUAL CREDIT OPPORTUNITY ACT (“EOA”) VALUATIONS AMENDMENT.

AMENDMENT APPLICATION:

1. LOAN SECURED BY A DWELLING.
2. SELLER, CREDITOR, AND ORIGINATOR COMPLIANCE.
3. EXEMPTIONS: SUBORDINATE LIENS, LOANS SECURED BY LAND. NO EXEMPTION FOR QUALIFIED MORTGAGES

AMENDMENT REQUIREMENTS:

1. THREE-DAY NOTICE OF RIGHT TO VALUATIONS.
2. THREE-DAY DEADLINE TO PROVIDE WRITTEN VALUATIONS.
3. VALUATIONS PROVIDED REGARDLESS OF LOAN CLOSURE.
4. NO PADDED APPRAISAL FEES OR COPY CHARGES.

I. CONSUMER FINANCE PROTECTION BUREAU (“CFPB”) 2013 LOAN ORIGINATOR AMENDMENT.

AMENDMENT APPLICATION:

1. LOANS SECURED BY A DWELLING.
2. ORIGINATORS, TABLE-FUNDED CREDITORS, AND SELLERS.
3. EXEMPTIONS: NO EXEMPTION FOR SELLERS THAT FINANCE MORE THAN THREE PROPERTIES/YEAR. NO EXEMPTION FOR QUALIFIED MORTGAGES.

AMENDMENT REQUIREMENTS:

1. NO COMPENSATION RECEIVED OR PAID BASED ON LOAN TERMS.
2. MULTIPLE PARTIES CANNOT PAY ORIGINATORS.
3. EXTENSION OF RECORDKEEPING PERIOD.
4. NO FINANCING OF CREDIT INSURANCE PREMIUMS OR FEES.
5. NO MANDATORY ARBITRATION.
6. VERIFICATION OF ORIGINATOR LICENSE.

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The Dodd-Frank Act passed by the U.S. Congress contains much more information. Only those issues that may pertain to small investors in the opinion of the author are included. Please contact the offices of Judith A. Gray, P.L.L.C. for information on the Dodd-Frank Act that may not be contained in this article.