

SFA Approach to TPR Reviews for Verification Safe Harbor under General QM Rule

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The goal of this initial version of the Structured Finance Association (“SFA”) Third Party Review (“TPR”) Scope documentation is to create a uniform testing standard to be utilized across TPR firms pertaining to the Verification Safe Harbor (“VSH”) to the New General Qualified Mortgage (“QM”) Rule. The approach outlined in this document results from industry participant discussions across TPR firms, rating agencies, and other members of SFA’s workgroup.

Like the approach taken in creating the original version and subsequent versions of the SFA TRID Compliance Review Scope, this documentation establishes an industry-wide best practices approach among TPRs to pre-securitization testing logic that will drive the due diligence process. There may be shifts in the requirements should there be future CFPB rulemakings or formal guidance, market development, or as caselaw develops.

The primary focus of this initial version of SFA’s TPR Scope of Review for QM VSH is to document the approaches available to clients utilizing a TPR firm to perform due diligence on General QM loans under the new rule effective March 1, 2021. Note the conclusions set forth herein do not necessarily reflect how courts and regulators, including the CFPB, may view VSH considerations presently, or in the future. As appropriate, SFA and its members will continue to work with the CFPB toward the goal of receiving formal regulatory guidance for the benefit of the consumer, primary, and secondary mortgage markets.

This is not intended to be legal advice and is strictly for general informational purposes only and shall not be relied on by any third party as legal advice. If you have received this document and have questions whether generally about laws applicable to you, your business, or a particular transaction, you should consult with your legal counsel.

Overview

SFA convened members at an industry roundtable in April 2021 to discuss the Ability to Repay rules set forth under 12 CFR 1026.43. Industry stakeholders raised questions related to the new General QM rule, with specific focus on

Verification Safe Harbor, “VSH”. Since that initial roundtable, TPR firms have met to address these questions, and to determine where industry practices could be aligned to provide direction and clarity. Doing so not only provides a framework for increasing standardization but helps delineate for market participants where outstanding questions remain. In the various instances where questions remain unanswered, further work among industry participants—and possible clarification from regulators—will aid in the implementation and understanding of requirements under the new General QM rule. As that happens, this guide will be updated.

TPRs have suggested a framework that sets forth three potential options for an approach on a standard TPR compliance review. These three approaches would apply to loans subject to the new General QM model based on the calculated APR in relation to the Average Prime Offer Rate for loans with an application date on or after March 1, 2021. This document does not address every issue raised during these meetings, but rather reflects the key discussion points and considerations.

General QM focus on VSH

The central question discussed pertained to the review methodology to be utilized by the TPR firms to evaluate whether loans meet the safe harbor verification standards under the new General QM rule.

At a minimum, TPR firms will capture the lender-provided VSH Indicator. However, under the minimum approach, third-party review firms *do not* independently confirm the lender’s indicator or whether the loan identified as VSH by the lender achieved VSH under that approach. In addition to the reporting of the lenders VSH indicator, TPR firms can perform one of the following three options as part of the loan level due diligence review. For all options, the VSH indicator and determination method will be provided by the lender within the loan images, on the data tape, deal notes, or as part of the loan program/guidelines to which loans are originated.

Option 1: VSH Via Reference to underwriting guide Explicitly enumerated in the regulation (June 2020 GSE Guides)

Lender provides the VSH Indicator and determination method.

The loan utilizes one¹ of the GSE June 2020 guidelines specified in the regulation to meet VSH.

In the event the lender has identified the loan to have VSH status, the TPR firm will then determine documentation variances that would cause one to question the VSH attestation from the lender. If variances are identified, then the loan would not be identified by the TPR firm to meet the VSH documentation requirements under either the Fannie Mae guidelines or under the Freddie Mac guidelines. (Understanding future considerations may include the other enumerated guidelines including FHA, VA, USDA and possibly mixing and matching from the GSE and Agency guidelines using the explicitly referenced versions of the guides, but those would not be considered under the current implementation.)

Option 2: VSH via Subsequent GSE Guide Versions Affirmed to Be “Substantially Similar” to Enumerated Guides

- Lender provides the VSH indicator and determination method.
- Lender provides a set of GSE underwriting guides (other than June 2020 guides enumerated in the regulations).
- Lender provides affirmation that guides meet VSH because such guides comply with the verification standards in the guides specifically enumerated in the

¹ While Option 1 requires the use of a single guide (i.e., no “mixing and matching” between guides), in very limited instances, Option 1 would permit lenders utilizing the Fannie Mae June 2020 guides to reference specific enumerated sections of the Freddie Mac 2020 guide. As of the date of publication, the only identified instance is the ability to utilize

regulation commentary under Section 1026.43(e), or revised versions of those enumerated guides where the revised version is substantially similar to the versions specifically listed in the Comment².

The lender would affirm the source of the underwriting guides and the publication date. The determination and affirmation that the guides are substantially similar would fall on the lender and/or aggregator; **the TPR firm would not evaluate whether guidelines utilized by the lender are “substantially similar”** to the explicitly enumerated underwriting guidelines. The TPR determines documentation variances to the provided guidelines that would cause one to question the VSH indicator provided by the lender. If variances are identified, the loan would be identified by the TPR firm as failing to meet the VSH documentation requirements as affirmed by the lender (i.e., TPR will report loan as not having met VSH).

Option 3: VSH Via Proprietary Guides

- The lender provides the VSH indicator and determination method.
- Lender provides a set of proprietary (non-GSE) underwriting guides.
- Lender provides a worksheet/AUS connecting the loan level review components to enumerated guides.
- Lender provides affirmation that guides meet VSH because such guides comply with the verification standards in the guides specifically enumerated in the regulation commentary under Section 1026.43(e)

The lender would affirm the underwriting guides utilized meet VSH requirements. The determination and affirmation that the guides utilized meet VSH would fall on the lender and/or aggregator; **the TPR firm would not**

Freddie Mac guidelines for Restricted Stock Unit (“RSU”) considerations.

² (See [Comment 43\(e\)\(2\)\(v\)\(B\)-3.i](#) and [Comment 43\(e\)\(2\)\(v\)\(B\)-3.iv](#))

evaluate whether guidelines utilized by the lender are in line with the standards in the explicitly enumerated underwriting guidelines. The TPR firm reviews to identify documentation variances to the provided guides and worksheet/AUS that would cause one to question the VSH indicator provided from the lender. If variances are identified, then the loan would be identified by the TPR firm as failing to meet the VSH documentation requirements (i.e., TPR will report loan as not having met VSH).

The lender must also maintain policies and procedures to meet the requirement under the new General QM rule. Review of policies and procedures and comparison of guides utilized to underwriting standards in the explicitly enumerated GSE guides is outside of TPR review scope. While the policies and procedures may be reviewed as part of an operational assessment performed by rating agencies or aggregators, it is not included in the context of loan level due diligence performed by TPR firms.

Reporting

The TPR firms will include the following items in the securitization reports:

- The lender/seller’s VSH Indicator;
- Whether the TPR evaluated the VSH indicator provided by the lender/seller;
- Which of the above 3 options was employed to evaluate the VSH indicator;
- Whether the TPR firm identified a variance to the indicator based on the due diligence review; and
- Whether the loan met VSH based on the option selected:
 - Under Option 1: The TPR firms will report whether the loan met VSH via the explicit enumerated guides in effect in June 2020 and reference which specific guide was used for this evaluation.
 - Under Option 2: The TPR firms will report whether the loan met VSH via an updated version of one of the enumerated GSE guides

that was in effect in June 2020. The TPR will reference which version, including the publication date, of the updated guide used for this evaluation.

- Under Option 3: The TPR firms will report whether the loan met VSH via the guidelines provided. The TPR will reference the lender and/or aggregator guide used for this evaluation.

Additional details can be provided by the individual TPR firms reporting.

Questions and Answers

Question – 1. Will the TPR firms evaluate the lender’s Policies and Procedures for loans originated under the new General QM APOR considerations?

Answer – 1. TPR firms will not be reviewing the policies and procedures the lender maintains based on the regulation requirements. Creditors are required to maintain written policies and procedures to account for, according to their underwriting standards, the income, assets, debt, alimony, child support and monthly DTI or residual income in its determination of the consumer’s ability to repay the loan. The review of the policies and procedures may be evaluated as part of originator reviews performed by rating agencies or aggregators.

Question – 2. If the due diligence review is performing the VSH evaluation under Option 2 in which the lender/seller is attesting the guidelines subsequently published by one of the agencies is substantially similar to the enumerated guidelines, will the TPR firm determine whether the revised guidelines are substantially similar?

Answer – 2. To the extent a lender elects to utilize enumerated guides after the publication dates listed in the new General QM rule, the TPR firm will not be responsible for determining if the revised guides are “substantially similar” to the explicit version of the enumerated guides. The TPR would not determine if the underwriting guides

provided are “substantially similar” to the enumerated guides.

Note: Based on the FAQs published by FNMA on June 30, 2021, the burden of determining if revised guides were substantially similar would be the responsibility of the lender/creditor.

Question – 3. If the due diligence review is performing the VSH evaluation under Option 3 in which the lender/seller is attesting their guidelines meet the minimum requirements that are required to meet VSH, will the TPR firm perform a comparison of the lender’s guidelines to the explicitly enumerated guidelines in effect in June 2020?

Answer – 3. The TPR firm will not perform an evaluation of the lender’s guidelines to the explicitly referenced enumerated guidelines.

Question – 4. Will a loan containing the documentation required within the AUS findings from one of the GSEs be considered to meet the VSH requirements under 1026.43?

Answer – 4. Although loans originated to the documentation requirements reflected in an AUS may meet the documentation requirements under VSH, the adherence to the AUS requirements is not determinative of meeting VSH documentation to meet VSH³.

Question – 5. Can guideline exceptions be documented post consummation with compensating factors?

Answer – 5. No, at this point, guideline variances or exceptions are required to be documented by the creditor at or before consummation. (This would not apply to an aggregator’s overlay not used in making the credit

decision.) The workgroup will monitor this issue for CFPB clarifying guidance or caselaw on this topic.

Question – 6. Will TPR firms consider post consummation documentation under the General QM Rule?

Answer – 6. No, with one exception⁴ (referenced below). Documentation that is obtained or completed by the lender after consummation will not be allowed. Only documentation clearly utilized in the good faith determination at or prior to consummation will be considered to achieve VSH.

Question – 6a. If a creditor requires a verbal verification of employment post-consummation, as a condition of sale to backstop the income documentation verified within the timelines required by the guidelines, is that considered part of the QM analysis?

Answer – 6a. No, in that circumstance it would not be part of the QM analysis under the new General QM rule. Documents used to verify and consider income must be received and considered prior to or at consummation. Verification of employment post-consummation as a condition of sale are not relevant to a QM analysis, but for a securitization review there would be a credit exception based on rating agency criteria.

Question – 6b. Are creditors permitted to verify and confirm employment using only a written employment verification and other written documents to verify employment?

Answer – 6b. Yes, creditors may verify employment using written documents according to their guides. If a verbal verification of employment is not required to verify

³ As affirmed by the FAQs published by FNMA on June 30, 2021, an AUS finding will need to be supported by the enumerated guides to achieve VSH found here: <https://selling-guide.fanniemae.com/Published-Sources/FAQs/FAQ-Revised-QM-Definition/2299468981/Loan-Eligibility-Under-the-Revised-QM-Definition-FAQs-06-30-2021.htm>

⁴ The one exception will be in relation to specific situations identified in the Fannie Mae and Freddie Mac enumerated guides explicitly permitting

the Verbal Verification of Employment, VVOE, to be obtained after consummation, but prior to loan delivery to confirm employment. If the VVOE cannot be obtained after consummation, then the loan is not eligible for delivery. The lender must have obtained the third-party documentation to consider and verify the income used to qualify the consumer for the loan. See “Background on Question 6” for further detail.

employment prior to consummation as part of the guides, then a verbal verification is not part of the QM analysis and cannot form the basis of a finding that the loan is not QM or has a guideline credit exception, but for a securitization review there would be a credit exception based on rating agency criteria.

Question – 6c. If a creditor obtains a verbal verification of employment for the first-time post-consummation does that affect the loan’s QM status or the creditor’s compliance findings?

Answer – 6c. No, it does not impact the General QM loan designation. Creditors that verify and consider employment according to the applicable guides before consummation have met the requirements to originate a QM loan. This is true even if the guides only require verification of employment via written documentation. Post-consummation verbal verifications of employment may be used to confirm salability and in the event the creditor was unable to obtain the verbal verification of employment it may impact the VSH indicator identified by the TPR.

Question – 7. When TPR firms are reviewing loans in accordance with Option 2 or Option 3 above, in addition to the updated enumerated guides and publication dates listed in the lender affirmation, will the guidelines be permitted to list certain publications (Lender Letters and Mortgagee Letters) as allowable documents to achieve VSH under the new General QM rule?

Answer – 7. Yes, however TPR firms will only consider Lender /Mortgagee Letters referenced in the underwriting guides provided prior to beginning the review under Option 2 and Option 3, and these can be utilized to achieve VSH under the new General QM Rule. Under option 1, the TPR firms are limited to the explicit guidelines and will not consider Lender/Mortgagee Letters.

Background on Question # 6 Regarding Employment Verification

The GSE approach as it pertains to the VVOE will be considered when a TPR firm reviews loans that did not obtain that verification within the specified timeline prior to consummation.

For a loan that does not have any other QM related failures identified with a submitted loan designation of either Safe Harbor QM (APOR) or Higher Priced QM (APOR), the below handling for VVOE permitted by the guidelines, (when a TPR firm is reviewing based on either Option 1, Option 2, or Option 3 above), to be obtained after consummation, but prior to delivery, will apply⁵:

VVOE Completion Timing	Exception Grade	Loan Designation	VSH Status
Prior/At Consummation	No Exception	General QM	Yes
Post Consummation	EV2-B	General QM	Yes
Not Obtained or Not Employed	EV3-C	General QM	No

The SFA workgroup will continue to maintain an updated understanding of the rating agencies’ considerations of loans reviewed to each of the above 3 options for VSH and whether additional loss severities may be applied to loans reviewed for VSH based on the various options referenced above.

The above review options as well as the questions and answers are intended to provide clarity on the current approaches to be taken by TPRs for VSH considerations. There will be further updates to address industry considerations of compensating factors and possible evaluations of guideline exceptions made post consummation. To the extent the CFPB provides additional guidance, whether informal or through updated

guidelines, the lack of the VVOE or if obtained post consummation, it would be an EV2-B exception based on rating agency criteria.)

⁵ The exception for a VVOE that is either not obtained or the consumer is not employed when the VVOE is attempted, will likely be a Credit EV3-C, unless the guidelines do not require the VVOE within 10 days of consummation or prior to delivery. (Absent the requirement in the

regulations, the above approach options are subject to change.

The GSE permissibility to perform the Verbal Verification of Employment prior to delivery caused pause to the pre-consummation timing requirement when there is an argument that the rule may not mandate the VOE.

The key basis for the post close VOE consideration is the

difference between 1026.43(c)(2)(ii) which is applicable to Non-QM loans under ATR and 1026.43(e)(2)(v)(B)(1) for General QM.

The default will be to permit post close VVOE permitted within the GSE enumerated guides for General QM APOR loans. Loans with post close VVOE will be evidenced by exceptions, either EV2-B or EV3-C as reflected on the chart above, (subject to any alternative guidance on the expected grades from rating agencies).

§ 1026.43(c)(2)

(2) Basis for determination. Except as provided otherwise in paragraphs (d), (e), and (f) of this section, in making the repayment ability determination required under paragraph (c) (1) of this section, a creditor must consider the following:

(i) The consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan;

(ii) If the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status;

(iii) The consumer's monthly payment on the covered transaction, calculated in accordance with paragraph (c)(5) of this section;

§ 1026.43(e)(2)(v)(B)(1)

(1) Verifies the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan using third-party records that provide reasonably reliable evidence of the consumer's income or assets, in accordance with paragraph (c)(4) of this section; and

(2) Verifies the consumer's current debt obligations, alimony, and child support using reasonably reliable third-party records in accordance with paragraph (c)(3) of this section.