

Matter of Part 60 RMBS Put-Back Litig.
2019 NY Slip Op 31778(U)
June 20, 2019
Supreme Court, New York County
Docket Number: 777000/2015
Judge: Marcy Friedman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

-----X
IN RE. PART 60 RMBS PUT-BACK LITIGATION

INDEX NO. 777000/2015

MOTION SEQ. NO. 012

-----X
DECISION AND ORDER

THIS DOCUMENT APPLIES TO ALL CASES

-----X
HON. MARCY S. FRIEDMAN:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 661 were read on this motion to/for APPEAL OF SPECIAL MASTER ORDER

By Memorandum and Order dated December 10, 2018 (Order), Special Discovery Master Theodore H. Katz approved a Protocol in the coordinated Part 60 RMBS Put-Back and Monoline Litigation for verification of borrower information. While the parties resolved many areas of dispute as to the Protocol, the Special Master accepted defendants' proposed Protocol in resolving the remaining disputes. (Protocol, annexed as Ex. B to Aff. of Zachary W. Mazin [counsel for Plaintiffs] [Mazin Aff.].) The Protocol provides for third-party verification of income and/or employment information provided by a borrower where the plaintiffs "certify [among other things] that, as to each of the Selected Loans, Plaintiffs possess sufficient specific indicia that borrower information in the loan file may be incorrect, thus warranting third party verification." (Protocol, at 9 [internal quotation marks and ellipses omitted].) The Protocol sets forth six "indicia" (or red flags) warranting third-party verification. (Id., at 9-10.)

After a de novo review, the court holds that the Order should be affirmed for the reasons stated by the Special Master in his thorough, well-reasoned decision. The Special Master's resolution of the disputes at issue on this appeal should be upheld for the following additional reasons.

Plaintiff seeks to amend the first of the indicia specified in the Protocol to add the underlined language below:

“Information derived from the borrower’s asset profile, credit report and/or the Previously Authorized Sources specific to the borrower regarding the borrower’s employment is materially inconsistent with the income and/or employment information provided by the borrower, provided that the omission of information on a borrower’s credit report shall not be considered an inconsistency.”

(Mazin Aff., Ex. F, at 5.) In support of this amendment, plaintiffs assert that “[w]here a borrower claims to earn a substantial income, but has little or no assets, this inconsistency suggests that a misrepresentation as to income and/or employment may have been made.” (Pls.’ Memo. In Supp., at 4-5.)¹ Plaintiffs, however, made no showing that the borrowers of loans at issue in this litigation had “substantial” income. Nor did they make any showing as to the typical range of borrowers’ income or as to the standards for determining whether assets shown in an “asset profile” are materially inconsistent with reported income or employment information. At the oral argument of the appeal, plaintiffs offered as the sole example of such an inconsistency the seemingly extreme example of a borrower with reported income of \$500,000 and virtually no savings. (June 4, 2019 Oral Argument Transcript, at 7 [Tr.].) As the Special Master correctly held, plaintiffs’ proposal for verification involving the borrower’s asset profile “essentially

¹ In proceeding before the Special Master, although plaintiffs did not seek to amend this particular criterion for verification, they did propose a similar separate ground for verification, rejected by the Special Master, which provided for verification where “[t]he borrower’s credit report and/or asset profile does not support the income and/or employment as stated in the loan file.” (Mazin Aff., Ex. E, Pls.’ Proposed Protocol, at 10.)

establish[ed] no standard other than an expert's subjective discretion," and therefore was not reasonably capable of consistent application across the Part 60 actions. (Order, at 6.)

Plaintiffs also seek to amend the third of the indicia to omit the underlined language:

"Documents related to income or employment in the loan file appear to have been altered (e.g., white outs, squeezed-in or misaligned numbers, multiple font types) without sufficient explanation in the loan file."

(Mazin Aff., Ex. F, at 5.) Plaintiffs' proposed amendment, which the Special Master rejected, would permit verification where any document in a loan file has been altered, no matter how minor, how innocent (e.g., a correction of a hand-written "typo") or how irrelevant the alteration is to the income and employment reported by the borrower. This proposed amendment could also vastly expand the number of loans subject to verification, without any showing that the verification may lead to relevant evidence.²

Finally, plaintiffs seek inclusion in the Protocol of the following additional basis for verification: "Information indicating that the borrower's income as stated in the loan file is unreasonable in light of the borrower's profession, geography, credit profile, etc." (Pls.' Memo. In Supp., at 7.) This catch-all provision would effectively authorize verification in any case in which an expert identified an inconsistency that was not included in the other indicia warranting verification that were approved by the Special Master. As discussed above, this provision fails

² In seeking the amendment to permit verification based on alteration of any documents in the loan file, and not just of documents related to income or employment, plaintiffs argue that the limitation would prevent verification where bank statements have been altered, "because bank statements are ostensibly asset-related, rather than 'related to income or employment.'" (Pls.' Memo. In Supp., at 6.) The certification procedure in the Protocol permits plaintiffs to certify that verification is warranted based on an alteration of a bank statement that may involve or obscure deposits of income. (See Protocol, at 14.) At the oral argument, moreover, defendants appeared to acknowledge that plaintiffs' experts may make good faith determinations as to what documents are or are not related to income. (See Tr., at 19.) Plaintiffs' borderline example regarding bank statements does not warrant a modification of the third of the indicia.

to provide for a standard that is not wholly dependent on the subjective determinations of plaintiffs' experts. (See Order, at 6.)

In directing the development of a verification protocol, this court emphasized that the protocol should set forth both standards for determining the circumstances in which verification is reasonably necessary—i.e., would lead to relevant information—as well as procedures for minimizing detrimental impacts on borrowers and undue burden on employers. The court also emphasized that the protocol should apply common standards to the individual cases in an effort to ensure the resolution of issues in a consistent and efficient manner across the Part 60 cases. (In Re: Part 60 RMBS Put-Back Litigation, 2017 NY Slip Op 32161[U], 2017 WL 4569727, * 6 [Oct. 13, 2017], affd 166 AD3d 434 [1st Dept 2018].) In balancing the parties' need for discovery against the need to minimize prejudice to borrowers and burden on employers, the court directed that the verification should be permitted only for a reasonably limited subset of loans. (2017 WL 4569727, at * 10.) The Protocol adopted by the Special Master achieves these objectives.

In upholding the Order, the court makes no finding as to what constitutes a breach of a representation or warranty.

It is accordingly hereby ORDERED that the Memorandum and Order of Special Discovery Master Katz, dated December 10, 2018, approving the attached so-ordered Protocol, is affirmed.

6-20-19
DATE

Marcy S. Friedman
MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT		

APPLICATION:

CHECK IF APPROPRIATE:

PART 60 VERIFICATION PROTOCOL

This protocol provides an overview of the steps Plaintiffs may take to verify borrowers' income and employment. In particular, it specifies how Plaintiffs will make use of Previously Authorized Sources,¹ and provides an explanation of Plaintiffs' proposed steps for each type of verification proposed.

These proposed steps are not intended to establish a minimum standard for reunderwriting review. Rather, they are intended only to provide acceptable parameters for additional steps that some Plaintiffs may choose to take in their review, if and when desired. To the extent a Plaintiff chooses to pursue verification discovery, it will not be obligated to do so with respect to every loan it reviews, nor will its pursuit of one form of verification discovery preclude it from pursuing or obligate it to pursue others.

For cases proceeding by sampling, Plaintiffs will only seek to verify information for loans included in the sample. In cases where sampling is not being pursued, Plaintiffs will only seek to verify information for the population of loans that any Plaintiff intends to reunderwrite in the subject litigation.

Plaintiffs' counsel affirms as part of the protocol that they will oversee and take ultimate responsibility for the actions of their RUW Firm(s) in their cases. After the verification process is

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Brief in Support of Plaintiffs' Application, dated February 10, 2017, Index No. 777000/2015, Doc. No. 246 and Index No. 779000/2015, Doc. No. 103. ("On June 13, 2016, Plaintiffs were authorized to 'access and use the publicly available tools and reports identified in the May 5, 2016 Letter in the course of reunderwriting loans in the Part 60 Actions' (the 'Publicly Available Information'). Order re the Use of Publicly Available Data in reunderwriting Loans, dated June 13, 2016 []. And on October 3, 2016, Plaintiffs were authorized to procure 'Audit Credit Reports,' ... (the Publicly Available Information and Audit Credit Reports shall be referred to herein as the 'Previously Authorized Sources'). Oct. 3, 2016 Interim Order at 5.").

complete, Plaintiffs' counsel will certify that, to the best of their knowledge, the RUW Firm(s) complied with the protocol.

At this time, Defendants do not intend to seek re-verification of any of the results obtained by Plaintiffs via the protocol. Defendants reserve all rights to challenge any evidence (either prior to or at trial), and reserve the right to seek re-verification in individual instances if warranted by the circumstances by application to the Special Master, but do not anticipate doing so at this juncture.

Defendants perfected an appeal (the "Appeal") from the Court's October 13, 2017 Order. In an Order issued on November 13, 2018, the Appellate Division, First Department, adjudicated that Appeal, and affirmed the Court's October 13, 2017 Order.

Defendants reserve all rights with respect to Plaintiffs' retention or use, or the admissibility of any evidence collected under this Protocol with respect to any subsequent appellate practice.

I. Verification of Income and Employment for W-2 Borrowers

Plaintiffs' efforts to verify information regarding the length of borrowers' employment, their position and/or job title, and their income may include the following steps:

A. Previously Authorized Sources

The Plaintiffs' RUW Firms, under the direction of Plaintiffs' reunderwriting experts, may first access the Previously Authorized Sources approved by the Special Master via orders issued on June 17, 2016 and October 3, 2016.² Plaintiffs' use of the Previously Authorized Sources may include the following:

² The Previously Authorized Sources identified herein do not constitute an exhaustive list of all such resources that are available. Plaintiffs reserve the right to utilize any publicly available and/or Previously Authorized Source consistent with the Special Master's June 17, 2016 Order.

- The RUW Firm may seek to confirm that the employer disclosed in the loan file actually exists or existed. To do so, the RUW Firm will confirm basic information about the employer, which may include, among other things, the employer's address, phone number, and contact information, by using publicly available resources such as Google.com, Searchbug.com, and 411.com.
- For licensed professionals, the RUW Firm may use certain licensing resources, such as state and county websites, to confirm the borrower's employment history.
- The RUW Firm may obtain a LexisNexis/Accurint (or similar) report for each borrower to ascertain, among other things, the length of a borrower's employment.
- The RUW Firm may obtain a PACER report, which may provide employment and income information for borrowers who have filed for bankruptcy.
- The RUW Firm may obtain an Audit Credit Report, which may provide information about a borrower's employment and financial history.
- The RUW Firm may access The Work Number's database to further ascertain employment and income information.³

B. Verifications

The RUW Firm may also review the documents in the loan file and determine whether a Form 1003 and/or a Borrower Authorization Form found by the Special Master to authorize such verifications in accordance with Section III below that expressly provides for the verification of borrower information after the loan's closing is present. If the loan file does not include a Form 1003 and/or other Borrower Authorization Form found by the Special Master to authorize such

³ Although The Work Number offers users the option of contacting employers directly to verify employment information, Plaintiffs will not utilize that function, but would only use the information already reported to The Work Number.

verifications in accordance with Section III below, the RUW Firm will take no additional steps to verify the borrower’s employment or income beyond those set out above.

If the loan file does contain such authorization, the RUW Firm may seek to verify employment and income information by contacting the borrower’s employer directly. Prior to and as a requirement of seeking verifications of employment and income information in a particular Part 60 Action, in accordance with Section III below, counsel for the Plaintiff shall, *inter alia*: (i) certify that Publicly Available Information was reasonably pursued as part of the verification process; (ii) provide counsel for the Defendant(s) with a list of the loans to be verified (the “Selected Loans”), (iii) identify whether a Form 1003 and/or a Borrower Authorization Form that expressly provides for the verification of borrower information after the loan’s closing is present in the loan file for each of the Selected Loans; and (iv) certify that, as to each of the Selected Loans, Plaintiff possesses sufficient specific indicia that “borrower information in the loan file may be incorrect, thus warranting third party verification...”⁴ Such indicia (“Indicia”) shall include:

1. Information derived from the borrower’s credit report and/or the Previously Authorized Sources specific to the borrower regarding the borrower’s employment is materially inconsistent with the income and/or employment information provided by the borrower, provided that the omission of information on a borrower’s credit report shall not be considered an inconsistency;
2. Income information reported on the loan application exceeds income information derived from non-borrower-specific Previously Authorized Sources (*e.g.*, generalized

⁴ Decision/Order, dated April 10, 2018, Index No. 777000/2015, Doc. No. 503 and Index No. 779000/2015. Doc. No. 199 (the “April 10, 2018 Order”), at 3.

data concerning income for a particular occupation, job title, locality, and time period) by 50% or more (or if the source provides a range of incomes, if the income reported on the loan application exceeds the 75th percentile by 25% or more);⁵

3. Documents related to income or employment in the loan file appear to have been altered (e.g., white outs, squeezed-in or misaligned numbers, multiple font types) without sufficient explanation in the loan file;
4. Inconsistencies in the information that the borrower provided regarding the borrower's income;
5. Inconsistencies in the information that the borrower provided regarding the borrower's employment;
6. Loans as to which the documentation type or loan program was changed to a less stringent documentation type during the application process or prior to the loan's closing.

Upon issuance of the requisite certifications to counsel for the Defendant(s) pursuant to Section III, the RUW Firm may undertake the following steps for each of the Selected Loans:

- *First*, the RUW Firm may call the employer listed on the loan application and ask to be connected to the Human Resources department. When the RUW Firm makes such contact, it will indicate to the employer that they are conducting a post-closing review to confirm certain employment and income information relevant to the borrower. Importantly, to obviate any appearance of wrongdoing on the borrower's part, when

⁵ Defendants object to the relevance or admissibility of all such non-borrower specific information, and the use of such information in selecting loans for verification is without prejudice to all of Defendants' rights to challenge any use of such information at any stage in these proceedings or at trial, and shall not be construed as any admission or concession that such information is reliable, valid, relevant, or admissible.

making such contact, the RUW Firm will indicate in the call and/or on the verification form that the inquiry is not related to any investigation, legal action or collection against the borrower, and will not disclose to the employer any information provided by the borrower in the loan application beyond what is necessary to correctly identify the borrower. The RUW Firm will request the employer's fax number and/or email address, and confirm that the fax line and/or email inbox is secure.⁶ If the employer indicates that it is unwilling to provide the requested information, the RUW Firm will cease direct communications (except that Plaintiff may choose to pursue the issuance of a subpoena, as set out below).

- Second, the RUW Firm may transmit the verification form to the employer via a secure fax line or email. The form asks the person completing it to be: (i) authorized to provide the requested information; (ii) have access to the actual employment and payroll data which serves as the basis for completing the form; and (iii) apply quality control procedures. The RUW Firm will not provide copies of any Form 1003 or conforming Borrower Authorization Form to the employer.⁷
- Third, the employer may transmit the completed verification form to the RUW Firm via a secure fax line or email.⁸

⁶ As used herein, a "secure" fax line or email inbox is one that allows borrowers' non-public information to be protected with reasonable administrative, technical, and physical safeguards to ensure the confidentiality, integrity, and availability of the information, and prevents the unauthorized or inappropriate access, use, or disclosure of said information.

⁷ Decision/Order, dated October 13, 2017, Index No. 777000/2015, Doc. No. 334 and Index No. 779000/2015, Doc. No. 156 (the "October 13, 2017 Order"), at 8 n.6.

⁸ After sending the verification form, the RUW Firm may make one additional follow-up call to confirm only whether the verification form was received, and may make up to two additional fax or email requests.

- *Fourth*, when the verification form is received, the RUW Firm will promptly provide the verification form to counsel for production to defendant(s) in the applicable litigation. Counsel will produce to defendant(s) the verification form within five (5) business days of receipt from the RUW Firm.

C. Subpoenas

If the preceding verification process proves unsuccessful (*e.g.*, if the employer simply fails to return the form), Plaintiffs may choose to make an application to the Special Master based upon a showing of good cause pursuant to the relevant provisions in the Procedures for Practice issued on March 21, 2016.

II. Verification of Income and Employment for Self-Employed Borrowers

Plaintiffs may also seek to verify employment and income information about self-employed borrowers, who used certified public accountants or other tax professionals (“Tax Preparers”) to prepare their individual and business tax returns, in instances where a Tax Preparer provided a letter or letters at the time of origination attesting to borrower’s residential history, the length of time the borrower was self-employed, the nature of the borrower’s business, the borrower’s ownership percentage in the business, and/or indicating that the Tax Preparer had filed the borrower’s tax returns for a specified number of years. Plaintiffs’ verifications of this information provided by these borrowers may consist of the following steps:

A. Previously Authorized Sources

The RUW Firms, under the direction of Plaintiffs’ reunderwriting experts, will first use the Previously Authorized Sources approved by the Special Master via orders issued on June 17, 2016

and October 3, 2016.⁹ Plaintiffs' use of the Previously Authorized Sources may include the following:

- The RUW Firm may seek to confirm basic information regarding the business disclosed in the loan file. To do so, the RUW firm will seek to confirm that the business actually exists or existed and that the borrower-provided address, phone number, and contact information are or were accurate, by using publicly available sources such as Google.com, Manta.com, and the Secretary of State's website.
- For licensed professionals and/or businesses, the RUW Firm may use certain licensing resources, such as state and county websites, to confirm employment history.
- The RUW Firm may obtain a LexisNexis/Accurint (or similar) report for each borrower to ascertain, among other things, the existence of the business and the length of time the business has been in operation.
- The RUW Firm may obtain a PACER report, which may provide employment and income information for borrowers /businesses that have previously filed for bankruptcy.
- The RUW Firm may obtain an Audit Credit Report, which may provide information about a borrower's employment and financial history.

B. Verifications

The RUW Firm may also review the documents in the loan file and determine whether a Form 1003 and/or a Borrower Authorization Form found by the Special Master to authorize such

⁹ As noted above, the Previously Authorized Sources identified herein do not constitute an exhaustive list of all such resources that are available. Plaintiffs reserve the right to utilize any publicly available and/or Previously Authorized Source consistent with the Special Master's June 17, 2016 Order.

verifications in accordance with Section III below that expressly provides for the verification of borrower information after the loan’s closing is present. If the loan file does not include a Form 1003 and/or other Borrower Authorization form found by the Special Master to authorize such verifications in accordance with Section III below, the RUW Firm will take no additional steps to verify the borrower’s employment or income beyond those set out above.

If the loan file does contain such authorization, the RUW Firm may seek to verify income and employment information by contacting the borrower’s Tax Preparer directly. Prior to and as a requirement of seeking verifications of employment and income information in a particular Part 60 Action, counsel for the Plaintiff shall in accordance with Section III below: (i) certify that Publicly Available Information was reasonably pursued as part of the verification process; (ii) provide counsel for the Defendant(s) with a list of the Selected Loans; (iii) identify whether a Form 1003 and/or a Borrower Authorization Form that expressly provides for the verification of borrower information after the loan’s closing is present in the loan file for each of the Selected Loans; and (iv) certify that, as to each of the Selected Loans, Plaintiffs possess sufficient specific indicia that “borrower information in the loan file may be incorrect, thus warranting third party verification...”¹⁰ Such indicia (“Indicia”) shall include:

1. Information derived from the borrower’s credit report and/or the Previously Authorized Sources specific to the borrower regarding the borrower’s employment is materially inconsistent with the income and/or employment information provided by the borrower, provided that the omission of information on a borrower’s credit report shall not be considered an inconsistency;

¹⁰ April 10, 2018 Order at 3.

2. Income information reported on the loan application exceeds income information derived from non-borrower-specific Previously Authorized Sources (e.g., generalized data concerning income for self-employed persons in a particular occupation, job title, locality, and time period) by 50% or more (or if the source provides a range of incomes, if the income reported on the loan application exceeds the 75th percentile by 25% or more);¹¹
3. Documents related to income or employment in the loan file appear to have been altered (e.g., white outs, squeezed-in or misaligned numbers, multiple font types) without sufficient explanation in the loan file;
4. Inconsistencies in the information that the borrower provided regarding the borrower's income;
5. Inconsistencies in the information that the borrower provided regarding the borrower's employment;
6. Loans as to which the documentation type or loan program was changed to a less stringent documentation type during the application process or prior to the loan's closing.

Upon issuance of the requisite certifications to counsel for the Defendant(s) pursuant to Section III, the RUW Firm may undertake the following steps for each of the Selected Loans:

- *First*, the RUW Firm may identify the Tax Preparer listed in the loan file and verify the Tax Preparer's license online. The RUW Firm may initiate contact with the Tax

¹¹ Defendants object to the relevance or admissibility of all such non-borrower specific information, and the use of such information in selecting loans for verification is without prejudice to all of Defendants' rights to challenge any use of such information at any stage in these proceedings or at trial, and shall not be construed as any admission or concession that such information is reliable, valid, relevant, or admissible.

Preparer and indicate that they are conducting a post-closing review to confirm certain information relevant to the borrower. Importantly, to obviate any appearance of wrongdoing on the borrower's part, when making such contact, the RUW Firm will indicate in the call and/or on the verification form that the inquiry is not related to any investigation, legal action or collection against the borrower, and will not disclose to the Tax Preparer any information provided by the borrower in the loan application beyond what is necessary to correctly identify the borrower. The RUW Firm will request the Tax Preparer's fax number and/or email address and confirm that the fax line and/or email inbox is secure. If the Tax Preparer indicates that he or she is unwilling to provide the requested information, the RUW Firm will cease direct communications (except that Plaintiff may choose to pursue the issuance of a subpoena, as set out below).

- Second, the RUW Firm may transmit the verification form to the Tax Preparer via secure fax line or email, and, when faxing or emailing such form, will include the letter or tax documentation the Tax Preparer prepared at the time of origination. The form seeks confirmation that the Tax Preparer prepared the forwarded documents and that the information listed therein is true and complete. The RUW Firm will not provide copies of any Form 1003 or conforming Borrower Authorization Form to the Tax Preparer.¹²

¹² October 13, 2017 Order at 8 n.6.

- *Third*, the Tax Preparer may transmit the completed verification form to the RUW Firm via a secure fax line or email.¹³
- *Fourth*, when the verification form is received, the RUW Firm will promptly provide the verification form to counsel for production to defendant(s) in the applicable litigation. Counsel will produce to defendant(s) the verification form within five (5) business days of receipt from the RUW Firm.

C. Subpoenas

If the preceding verification process proves unsuccessful (e.g., if the Tax Preparer simply fails to return the form), Plaintiffs may choose to make an application to the Special Master based upon a showing of good cause pursuant to the relevant provisions in the Procedures for Practice issued on March 21, 2016.

III. Certification Form and Process

A. Special Master Approval of Borrower Authorization Forms

Pursuant to the directives of the Court's October 13, 2017 Order (Order at p. 8), to the extent Plaintiffs intend to rely on Borrower Authorization Forms other than the Form 1003, or to the extent Monoline Plaintiffs intend to conduct authorizations under this Protocol, the following procedure will govern approval of such authorizations:

- Plaintiffs shall identify specific Borrower Authorization Forms (or language common to such forms) which they contend authorizes the proposed verification of borrower income or employment information. Plaintiffs shall submit such forms,

¹³ After sending the verification form, the RUW Firm may make one additional follow-up call to confirm only whether the verification form was received, and may make up to two additional fax or email requests.

identifying the proposed authorizing language, to Defendants. The parties shall meet and confer in an attempt to narrow or resolve any disputes.

- Any disputes regarding the sufficiency of any identified form or language not resolved within ten business days of Plaintiffs' identification and submission to Defendants shall be presented in a joint letter submission to the Special Master, not exceeding eight pages, appending examples of such forms.
- The Special Master shall issue an order identifying specific Borrower Authorization Forms (or language common to such forms) which evidence borrower consent to reverification, and any relevant limitations on their use. In such Order, the Special Master may also specify whether the Form 1003 or any other Borrower Authorization Form authorizes Plaintiffs in the Monoline Cases to conduct reverification.

B. Form of Certification

Prior to conducting the verifications contemplated above, Plaintiffs shall submit to Defendants a Certification, which shall contain the following information:

- (1) An identification of each Selected Loan by loan number;
- (2) An identification of the approved authorization Plaintiffs rely on for each Selected Loan (i.e., a Form 1003 or other borrower authorization form previously approved pursuant to Section III.A);
- (3) Confirmation that Publicly Available Information was reasonably pursued as part of the verification process for each Selected Loan;
- (4) An identification of the identified category(ies) of Indicia Plaintiffs rely on to warrant the relevance of the verification; and

(5) A brief, generalized description of the circumstances justifying application of the Indicia to the Selected Loans. This description need not contain loan-specific data or details concerning the borrower or the identified inconsistency.

An example of a potentially acceptable Certification is as follows:

Loan	Authorization	Publicly Available Information Sought	Indicia Category	Reason(s) Indicia Applies
1234567	Form 1003	Yes	I.B.3	Whiteout of income on W-2
1234568	Form 1003	Yes	I.B.2	Stated income more than 50% greater than Salary.com
1234569	Form 1003	Yes	II.B.6	Loan file indicates post-application change from Full Doc to No Doc

IT IS SO ORDERED.

/s/ Theodore H. Katz
HON. THEODORE H. KATZ (RET.)
SPECIAL MASTER

DATED: December 10, 2018;
New York, NY

SO ORDERED

Marcy S. Friedman 6/20/19

MARCY S. FRIEDMAN, J.S.C.