

EXHIBIT A

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING)
File No. 2014-CFPB-0002)
In the matter of:)
PHH CORPORATION, PHH MORTGAGE)
CORPORATION, PHH HOME LOANS,)
LLC, ATRIUM INSURANCE)
CORPORATION, AND ATRIUM)
REINSURANCE CORPORATION)
_____)

STIPULATED PROTECTIVE ORDER

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Federal Regulation 12 C.F.R. § 1081.119(c) provides:

Documents and testimony introduced in a public hearing, or filed in connection with an adjudication proceeding, are presumed to be public. A motion for a protective order shall be granted:

- (1) Upon a finding that public disclosure will likely result in a clearly defined, serious injury to the party or third party requesting confidential treatment;
- (2) After finding that the material constitutes sensitive personal information, as defined in §1081.112(e);
- (3) If all parties, including third parties to the extent their information is at issue, stipulate to the entry of a protective order; or
- (4) Where public disclosure is prohibited by law. 12 C.F.R. § 1081.119(c).

Upon joint motion of Enforcement Counsel, Respondents, and the following third parties: [insert third parties here], the protective order set forth in Attachment A is hereby issued.

ORDERED:

Cameron Elliot
Hearing Officer
Date: February __, 2014

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned administrative proceeding, *In re PHH Corporation, et al.*, File No. 2014-CFPB-0002 (hereinafter, “Administrative Proceeding”) against improper use and disclosure of confidential information submitted or produced in connection with this Administrative Proceeding:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. **Definitions.** As used in this Protective Order, “Competitively Sensitive Information” means business or proprietary information the disclosure of which is likely to result in a clearly defined, serious injury to the party. “Sensitive Personal Information” means an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, State-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Bureau” means the Consumer Financial Protection Bureau or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this Administrative Proceeding. “Party” means any or all of the above-captioned parties to this Administrative Proceeding. “Third Party” means any of the third parties identified as joining in the motion for entry of this Protective Order. “Confidential Information” shall refer to (i) any document or portion thereof that contains privileged information, Competitively Sensitive Information, or Sensitive Personal Information; (ii) any Document, written report, or answers to questions, tangible thing, or transcript of oral testimony received by the Bureau in any form or format pursuant to a civil investigative demand, as those terms are set forth in 12 U.S.C. § 5562, or received by the Bureau voluntarily in lieu of a civil investigative demand; and (iii) any Document or other material prepared by, on behalf of, received by, or for the use by the Bureau

or any other federal or state agency in the conduct of an investigation of or enforcement action against any person, and any information derived from such Document or other material.

2. **Who May Designate.** The Parties and any Third Party, in complying with informal discovery requests, disclosure requirements, or discovery demands in this Administrative Proceeding, including Third Parties consenting to disclosures pursuant to 12 C.F.R. § 1081.119(a), may designate any responsive document or portion thereof as Confidential Information, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained. As set forth in paragraph 23 below (“Opportunity to Designate Confidential Information”), it is understood that the Parties to this Administrative Proceeding already have, or may have, in their possession Confidential Information received from a Third Party prior to entry of this Protective Order, which has not yet been designated as Confidential Information by that Third Party pursuant to paragraph 4 below. Any Party possessing such Confidential Information of a Third Party must provide that Third Party with the opportunity to designate such Confidential Information in accordance with paragraph 23 prior to using such Confidential Information in any way in this Administrative Proceeding, or disclosing such Confidential Information to any person or entity.

3. **Third Parties.** The Parties, in conducting discovery from third parties, in addition to Third Parties as defined above, shall provide to each third party a copy of this Protective Order so as to inform each such third party of his, her, or its rights herein.

4. **Designation.** The designation of Confidential Information shall be made by placing or affixing on the document, in a manner which will not interfere with its legibility, the word “Confidential 14-CFPB-02.” A designation of confidentiality under this Protective Order shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes Confidential Information, as defined above.

CFPB ENFORCEMENT COUNSEL DRAFT

5. **Nondisclosure of Confidential Information.** Except with the prior written consent of the producing Party or Third Party, no Confidential Information may be disclosed to any person, except as contemplated by the disclosures set forth in paragraph 6 of this Protective Order, below.

6. **Permissible Disclosures.** Confidential Information shall be disclosed only to: (a) the Hearing Officer presiding over this Administrative Proceeding, personnel assisting the Hearing Officer, the Bureau and its employees, and personnel retained by the Bureau as experts or consultants for this Administrative Proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this Administrative Proceeding including consultants, experts, and litigation support vendors, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order as set forth in Exhibit A; (e) any witness or deponent who may have authored or previously received the information in question; and (f) persons designated as hearing witnesses to the extent reasonably necessary in preparing to testify, provided that they are not affiliated in any way with any respondent and have signed an agreement to abide by the terms of the protective order as set forth in Exhibit A. Any memorandum, brief, exhibit or other document filed or lodged in this Administrative Proceeding, and any portion of the record or transcript of a hearing before the Hearing Officer in this Administrative Proceeding, that contains, refers to, or reflects the use of any Confidential Information shall be maintained under seal, and shall not be posted on the Bureau's website, produced in response to a request under the Freedom of Information Act, or otherwise made publicly available. Any memorandum, brief, exhibit or other document filed or lodged in any court having jurisdiction over any appellate

CFPB ENFORCEMENT COUNSEL DRAFT

proceedings involving this Administrative Proceeding, and any transcript of any such appellate proceeding, that contains, refers to, or reflects the use of such Confidential Information shall likewise be maintained under seal in that court.

7. Disclosure of confidential material to any person described in paragraph 6 of this Protective Order shall be only for the purposes of the preparation and hearing of this Administrative Proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Bureau may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice, 12 CFR Part 1081 or any other legal obligation imposed upon the Bureau.

8. Provided, however, that in all cases set forth in subparagraphs 6(d) and 6(f) of this Protective Order, the individual to whom disclosure is to be made has signed the form attached as Exhibit A hereto containing:

- a. a recital that the signatory has read and understands this Protective Order;
and
- b. a recital that the signatory understands that by signing the form he or she becomes subject to the terms of this Protective Order.

For a firm of experts, consultants or litigation support vendors, the requirements of the preceding sentence shall be deemed satisfied for the firm and its personnel if one person with authority to do so executes a sworn statement on behalf of the firm providing that all firm personnel who work on this Proceeding have been made aware of this Protective Order and the firm's responsibilities hereunder. Such sworn statements shall be retained by counsel for the disclosing Party and shall be made available for *in camera* inspection upon a showing of good cause, except that statements of any outside consultants, experts and/or litigation support vendors shall not be made available until such time, if any, as the Party is obligated to identify such individuals.

9. Under no circumstances shall Confidential Information marked as “Confidential 14-CFPB-02” be shared, disclosed to or discussed with any other individual or entity not identified in Paragraph 6 above, without the prior written consent of counsel. In addition, undersigned counsel will take all steps necessary to ensure that any Confidential Information designated as “Confidential 14-CFPB-02” shall be shielded from any individual or entity not identified in Paragraph 6 of this Protective Order.

10. **Declassification.** A Party shall not be obligated to challenge the propriety of a “Confidential 14-CFPB-02” designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any Party disagrees at any stage of these proceedings with the “Confidential 14-CFPB-02” designation, the Parties shall first try to resolve such a dispute in good faith on an informal basis. If the dispute concerns any Confidential Information designated by a Third Party, the informal efforts to resolve the dispute must include that Third Party. If the dispute cannot be resolved, the objecting Party may invoke this Protective Order by objecting in writing to the Party or Third Party who has designated the document or information as “Confidential 14-CFPB-02.” The designating Party or Third Party shall respond in writing within ten (10) days of receipt of the written objection. If the designating Party or Third Party does not withdraw the “Confidential 14-CFPB-02” designation, the objecting Party may then apply to the Hearing Officer for a ruling that the designated document or information is not entitled to “Confidential 14-CFPB-02” status and protection. The Party or Third Party that produced the document or information shall be given notice of the application and an opportunity to respond. To maintain restricted-use status, the proponent of the “Confidential 14-CFPB-02” designation must show that there is good cause for the designation and protection. Any designating Party or Third Party may also give notice it is eliminating a previous designation of a document or other information as “Confidential 14-CFPB-02.” In the event that a “Confidential 14-CFPB-02”

designation is removed, the designating party shall be responsible for eliminating that designation and shall fulfill this responsibility by providing a new, redesignated copy of the document or other Information.

11. Confidential Information in Oral Testimony.

a. A witness may be shown and/or examined about Confidential Information during the taking of testimony, if the witness already knows the contents of the Confidential Information, or if permitted by the provisions of paragraph 6 of this Protective Order. Witnesses shall not retain or copy portions of their transcript or deposition exhibits that contain Confidential Information unless they sign the form prescribed in paragraph 8 of this Protective Order. A witness who is not a Party or a representative of a Party shall be furnished a copy of this Protective Order before being examined about, or asked to produce, potential Confidential Information.

b. Any Party or Third Party may designate any portion(s) of a witness transcript (including exhibits) or videotape as containing Confidential Information by so advising the reporter in the course of the testimony, who shall indicate in the transcript and on the videotape what portion(s) of the testimony (or exhibits thereto) were so designated, or by so advising all other parties within fifteen (15) days after receiving a deposition transcript which pages of the transcript are designated "Confidential." In the case of deposition testimony, the Party taking the deposition shall be responsible for providing to any Third Party the witness transcript or videotape containing, referring to, or reflecting the use of that Third Party's Confidential Information within seven (7) days of its creation. In the case of a hearing before the Hearing Officer in this Administrative Proceeding, the Bureau shall be responsible for providing the witness transcript or videotape to the relevant Third Party. If no Party, Third Party, deponent or hearing witness timely designates information or documents as "Confidential," then the use of the transcript will not be treated as "Confidential."

CFPB ENFORCEMENT COUNSEL DRAFT

12. **Subpoenas by Courts or Other Agencies.** If any Party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of Confidential Information designated by another Party or Third Party, including under the Freedom of Information Act, the recipient of the discovery request shall promptly notify the designating Party or Third Party of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the designating Party or Third Party at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the designating Party or Third Party of its rights hereunder. The recipient of any such discovery request shall object to and oppose production of any Confidential Information designated under this Protective Order, including, if necessary, by filing a motion for a protective order in the appropriate court or proceeding, unless the designating Party or Third Party is given leave to intervene in that proceeding to seek a protective order on its own behalf. However, nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Protective Order to challenge or appeal any order requiring production of Confidential Information, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Hearing Officer or the Bureau. The recipient shall not oppose the designating Party's or Third Party's efforts to challenge the disclosure of Confidential Information.

13. **Use.** Persons obtaining access to Confidential Information under this Protective Order shall use the documents and the information contained therein only for preparation and hearing of this Administrative Proceeding (including appeals) and shall not use such information for any other purpose, including any business, governmental, commercial, or administrative or judicial proceedings, including civil litigation.

14. **Right to Disclose Confidential Documents.** Nothing in this Protective Order shall limit the right of any Party or Third Party to disclose to any persons or entities of its choosing,

CFPB ENFORCEMENT COUNSEL DRAFT

or limit any Party or Third Party and its counsel, consultants, experts and/or litigation support vendors from making use as they see fit, the Party's or Third Party's own Confidential Information.

15. **Non-Termination.** The provisions of this Protective Order shall continue to be binding after the conclusion of this Administrative Proceeding, including all appeals, unless the Parties and Third Parties agree otherwise in writing.

16. **Modification.** Nothing in this Protective Order shall prevent any Party, Third Party, or other person from seeking its modification or from objecting to discovery that it believes to be otherwise improper.

17. **Inadvertent Disclosure of Confidential Documents.** A Party or Third Party that has inadvertently produced Confidential Information without so designating it may at any time in this Administrative Proceeding redesignate such Information as "Confidential 14-CFPB-02." The inadvertent, unintentional, or in camera disclosure of Confidential Information shall not, under any circumstances, be deemed a waiver, in whole or in part, of any Party's or Third Party's claims of confidentiality. If a Party or Third Party inadvertently or unintentionally produces any Confidential Information without marking or designating it as such in accordance with the provisions of this Protective Order, that Party or Third Party shall promptly on discovery, either: (a) demand the return of the Confidential Document or Information; or (b) furnish a properly marked substitute copy, along with written notice to all Parties (or written notice alone as to non-documentary information) that such document or information is deemed "Confidential," and should be treated as such in accordance with the provisions of this Protective Order. If the receiving Party disputes the claim of confidentiality, the provisions of this Protective Order apply, including paragraphs 10 and 12. Otherwise, each receiving Party must treat such document or information as Confidential from the date such notice is received, but each receiving Party shall have no liability for any disclosures of the Confidential Information that were made prior to redesignation. Disclosure of such

Confidential Information prior to the receipt of such notice, if known, shall be reported to the designating Party.

In the event Confidential Information are inadvertently disclosed to a third party other than those identified herein, such disclosure shall be reported in writing to the designating Party or Third Party within five (5) business days of the discovery of such disclosure. The Party or its attorney who made the inadvertent disclosure must make all reasonable efforts to retrieve the Confidential Information and/or to confirm that all copies of the Confidential Information in the third party's possession have been destroyed.

18. **No Waiver.** The failure to assert a claim of privilege, work product, anticipation of litigation, and/or trial preparation protection for Confidential Information shall not constitute a waiver of the right to claim a privilege or protection.

19. **Admissibility.** Nothing contained in this Protective Order or any designation of confidentiality hereunder or any failure to make such designation shall be used or characterized by any Party as an "admission" by a Party or a Party opponent, nor shall any Party's designation of a document or information as "Confidential" affect the admissibility into evidence of the document or information so designated. Moreover, nothing in this Protective Order is intended to constitute an agreement regarding the scope of discovery.

20. **Inconsistent Designations.** In the event that a Party or Third Party produces two or more identical or substantially identical copies of a document or other information, and any copy is designated Confidential while other copies are not so designated, all such identical or substantially identical Confidential Information shall be treated as "Confidential 14-CFPB-02" once notice is given of the inconsistent designation. The designating Party or Third Party shall be responsible for giving notice of the inconsistent designation and for providing new, redesignated copies of the documents or information that is "Confidential 14-CFPB-02."

21. **Responsibility of Attorneys.** Counsel of record are responsible for employing reasonable measures to control, consistent with this Protective Order, duplication of, access to, and distribution of copies of Confidential Documents and Information. Counsel for the Parties shall keep all documents designated as “Confidential 14-CFPB-02” which are received under this Protective Order, secure within their exclusive possession and shall take reasonable efforts to place such documents or information in a secure area. Parties shall not duplicate any Confidential Information except for use consistent with this Protective Order. All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of documents or information designated as “Confidential 14-CFPB-02” under this Protective Order or any portion thereof, shall be immediately affixed with the word “Confidential 14-CFPB-02” if the word does not already appear.

22. **Retroactivity.** This Protective Order shall apply to any “Confidential 14-CFPB-02” Document or Information, appropriately marked as such, that was produced by any Party prior to the Order being signed.

23. **Opportunity to Designate Confidential Information.** It is understood by the Parties and Third Parties to this Administrative Proceeding that the Bureau or another Party already has, or may have, in its possession Confidential Information of a Third Party, which the Bureau or other Party received from that Third Party prior to entry of this Protective Order, and which that Third Party has communicated contains Confidential Information but has not had an opportunity to designate as Confidential Information using the marking prescribed in paragraph 4 above. So long as a Party or Third Party prior to the entry of this Protective Order has designated information as Confidential, the Bureau, and any other Party, shall not use any Confidential Information of a Third Party, or any Document or other material derived from that Third Party’s Confidential Information, in this Administrative Proceeding, or disclose such Confidential Information, or any Document or

other material derived from such Confidential Information, to any person or entity, without challenging the designation and giving the Party or Third Party a reasonable opportunity to respond and, if necessary, mark the Confidential Information with the specified “Confidential 14-CFPB-02” designation.

24. **Nondisclosure of non-PHH Related Information.** The Bureau’s investigations preceding the filing of this matter dealt with additional issues unrelated to PHH Corporation and the other respondents here. The Bureau will endeavor not to disclose Confidential Investigative Information unrelated to the claims or defenses at issue in this matter.

EXHIBIT A

**AGREEMENT CONCERNING INFORMATION
COVERED BY CONFIDENTIALITY ORDER**

The undersigned hereby acknowledges that he or she has read the Stipulated Protective Order regarding the confidentiality of discovery materials (the “Protective Order”) in the Administrative Proceeding before the Consumer Financial Protection Bureau entitled *In the matter of PHH Corporation, et al.*, File No. 2014-CFPB-0002, and understands its terms and agrees to be bound by each of those terms. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any Confidential Information made available to him or her, other than in accordance with the Protective Order.

If the undersigned is signing on behalf of a firm of court reporters, videographers, or litigation support vendors, the undersigned further states that he or she has authority to sign on behalf of the firm, and that he or she will ensure all personnel of the firm who work on this Proceeding are made aware of this Stipulated Protective Order and the firm’s responsibilities hereunder.

Signature: _____

Name (type or print):

Address:

Telephone Number:

Date:

If Signing on Behalf of a Firm:

Position:

Name of Firm: