

UNITED STATES OF AMERICA
Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING

File No. 2014-CFPB-0002

In the Matter of

PHH CORP., *et al.*

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ORDER DIRECTING PARTIES
TO RESPOND

On January 31, 2018, the en banc D.C. Circuit issued its decision in *PHH Corp. v. CFPB*, 881 F.3d 75 (D.C. Cir. 2018) (en banc). Although the court reversed some parts of the panel’s decision, it reinstated the portion that related to RESPA and its application to PHH and Atrium. *Id.* at 83. Thus, it is now the law of this case that PHH did not violate RESPA if it charged no more than the reasonable market value for the reinsurance it required the mortgage insurers to purchase, even if the reinsurance was a quid pro quo for referrals. *See PHH Corp. v. CFPB*, 839 F.3d 1, 41 (D.C. Cir. 2016), *rev’d in part en banc*, 881 F.3d. 75 (D.C. Cir. 2018). Further, it is the Bureau’s burden to show by a preponderance of the evidence that PHH’s charge for reinsurance exceeded the reasonable market value. *See id.* at 49-50 & n.27. As to remedy, the panel held that, if the Bureau could show that the price PHH charged for reinsurance exceeded its reasonable market value, then PHH could be required to disgorge the excess. *Id.* at 44 n.24. The panel further held that RESPA’s three-year statute of limitations applied to administrative proceedings brought by the Bureau. *Id.* at 50-55. The panel also held that it would “not here decide whether each alleged above-reasonable-market value payment from the mortgage insurer to the reinsurer triggers a new three-year statute of limitations for that payment. We leave that question for the CFPB on remand and any future court proceedings.” *Id.* at 55 n.30. The panel indicated that “[o]n remand, the CFPB may determine, among other things, whether, consistent with the applicable three-year statute of limitations, the relevant mortgage insurers paid more than reasonable market value to Atrium.” *Id.* at 55.

Accordingly, I direct that, within 30 days of the date this order is issued, the Bureau's enforcement counsel and PHH file a joint statement of no more than 15 pages in length regarding further proceedings in this matter. The statement should address what further proceedings are necessary; whether further fact-finding is necessary and whether I should remand the matter to the Bureau's administrative law judge; and what impact on this proceeding, if any, results from the Supreme Court's review of *Lucia v. SEC*, 868 F.3d 1021 (D.C. Cir. 2017), *cert. granted*, 138 S. Ct. 736 (2018). The statement should also address whether there is any possibility that this matter may be resolved through settlement. If the parties are unable to agree as to any of these matters, they may set forth their respective positions.

SO ORDERED.


A handwritten signature in blue ink, appearing to read "M. Mulvaney", is written over a horizontal line. The signature is stylized and includes the letters "CFPB" at the end.

Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection

May 10th, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the *Order Directing Parties to Respond* upon the following parties and entities in Administrative Proceeding 2014-CFPB-0002 as indicated in the manner described below:

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Jameelah Morgan
Docket Clerk
Office of Administrative Adjudication
Consumer Financial Protection Bureau

Signed and dated on this 11th day of May, 2018 at
Washington, D.C.