

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)

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 the joint stipulated motion of Enforcement Counsel and Respondents, 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 matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

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 Order, “Confidential Information” shall refer to any document or portion thereof that contains privileged information, competitively sensitive information, or sensitive personal information. “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 proceeding. “Respondents” mean PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation. “Party” means any or all of the above-captioned parties to this proceeding.

2. **Who May Designate.** The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this 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 material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

3. **Third Parties.** The Parties, in conducting discovery from third parties, shall provide to each third party a copy of this 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 marks “Confidential 14-CFPB-02’ or ‘Confidential’.” A designation of confidentiality under this 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.

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

6. **Permissible Disclosures.** Confidential Information shall be disclosed only to: (a) the Hearing Officer presiding over this proceeding, personnel assisting the Hearing Officer, the Bureau and its employees, and personnel retained by the Bureau as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) Respondents, including their respective Officers, Directors, and employees, and outside counsel of record for any Respondent, their associated attorneys and other employees of their law firm(s); (d) anyone retained to assist Respondents and their outside counsel in the preparation or hearing of this proceeding including consultants, experts, and litigation support vendors 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 and have signed an agreement to abide by the terms of the protective order as set forth in Exhibit A.

7. Disclosure of confidential material to any person described in paragraph 6 of this Order shall be only for the purposes of the preparation and hearing of this 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 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 Order; and
- b. a recital that the signatory understands that by signing the form he or she becomes subject to the terms of this 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 the sworn statement on behalf of the firm, provided that all firm personnel who work on this Proceeding are made aware of this 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’ or ‘Confidential’” 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’ or ‘Confidential’” shall be shielded from any individual or entity not identified in Paragraph 6 of this Order.

10. **Declassification.** A Party shall not be obligated to challenge the propriety of a “ ‘Confidential 14-CFPB-02’ or ‘Confidential’” 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’ or ‘Confidential’” designation, the Parties shall first try to resolve such a dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting Party may invoke this Order by objecting in writing to the Party who has designated the document or information as “ ‘Confidential 14-CFPB-02’ or ‘Confidential.’” The designating Party shall respond in writing within ten (10) days of receipt of the written objection. If the designating Party does not withdraw the “ ‘Confidential 14-CFPB-02’ or ‘Confidential’” 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’ or ‘Confidential’” status and protection. The 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’ or ‘Confidential’” 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’ or ‘Confidential.’” In the event that a “ ‘Confidential 14-CFPB-02’ or ‘Confidential,’” 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 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 Order. A witness who is not a Party or a representative of a Party shall be furnished a copy of this 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." If no Party or deponent timely designates information or documents as "Confidential" in a deposition, then the use of the transcript will not be treated as "Confidential."

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 submitted by another party or third party, including under the Freedom of Information Act, the recipient of the discovery request shall promptly notify the submitter 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 submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights

hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this 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 submitter's efforts to challenge the disclosure of Confidential Information.

13. **Use.** Persons obtaining access to Confidential Information under this Order shall use the documents and the information contained therein only for preparation and hearing of this 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 Information.** Nothing in this Order shall limit the right of any Party to disclose to any persons or entities of its choosing, or limit any Party and its counsel, consultants, experts and/or litigation support vendors from making use as they see fit, the Party's own Confidential Information. The restrictions set forth in any of the preceding paragraphs shall not apply to information or material that:

- a. was, is, or becomes public knowledge in a manner other than by violation of this Order;
- b. is acquired by the non-designating Party from a third party, outside of discovery in this Proceeding, which had the right to disclose such information or material;
- c. was lawfully possessed by the non-designating Party prior to its production in discovery in this Proceeding;
- d. is independently developed by the non-designating Party;
- e. is publicly filed with the Hearing Officer by a designating Party in the pleadings or otherwise, unless the designating Party has filed such information or materials under seal.

15. **Non-Termination.** The provisions of this Order shall continue to be binding after the conclusion of this Proceeding, including all appeals, until further order of the Hearing Officer, unless the Parties agree otherwise in writing.

16. **Modification.** Nothing in this Order shall prevent any 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 Information.** A Party that has inadvertently produced Confidential Information without so designating it may at any time in the Proceeding redesignate such Information as “Confidential.” 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 claims of confidentiality. If a Party inadvertently or unintentionally produces any Confidential Information without marking or designating it as such in accordance with the provisions of this Order, that Party shall promptly on discovery, either: (a) demand the return of the Confidential 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 Order. If the receiving Party disputes the claim of confidentiality, the provisions of this 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 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 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 Order is intended to constitute an agreement regarding the scope of discovery.

20. **Inconsistent Designations.** In the event that a 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' or 'Confidential'" once notice is given of the inconsistent designation. The designating 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' or 'Confidential'."

21. **Responsibility of Attorneys.** Counsel of record are responsible for employing reasonable measures to control, consistent with this 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' or 'Confidential'" which are received under this 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 Order. All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of documents or information designated as “Confidential 14-CFPB-02’ or ‘Confidential’” under this Order or any portion thereof, shall be immediately affixed with the word “ ‘Confidential 14-CFPB-02’ or ‘Confidential’” if the word does not already appear.

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

EXHIBIT A

**AGREEMENT CONCERNING CONFIDENTIAL
INFORMATION COVERED BY PROTECTIVE ORDER**

The undersigned hereby acknowledges that he or she has read the Protective Order Governing Discovery Material (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 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: