

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

Enforcement Counsel for the Consumer Financial Protection Bureau (Bureau), the five Respondents in this matter, and seven third parties that produced documents to both the Bureau and its predecessor in RESPA enforcement (Third Parties), the Department of Housing and Urban Development (HUD), jointly submitted a stipulated motion for the entry of a protective order, attached hereto as Attachment A.

In that motion, the Respondents and Third Parties represent that they each produced documents to HUD or the Bureau in response to one or more investigations about captive mortgage reinsurance arrangements and had received notice from the Bureau that these documents were likely to be produced to Respondents in this proceeding and may potentially be used as evidence in a public hearing. The Respondents and Third Parties also represented that they produced these documents in response to numerous investigative requests from multiple entities over several years. Thus, the investigative file is comprised of a mix of ordinary business records, confidential and commercial financial information, sensitive personal or financial information, and sensitive information relevant to one or more of the parties' competitors.

In light of this history, the thirteen movants proffer a protective order that establishes several classes of confidential materials and provides for a 5-day sealing period on submissions to the Office of Administrative Adjudication so that any party or third party with records at issue can redact truly sensitive materials prior to public disclosure. Enforcement Counsel note that such an elaborate structure and mechanism may not be appropriate or necessary in other administrative proceedings, rather, this protective order derives from a consensus agreement among the many interests in this instance in light of the investigation's history.

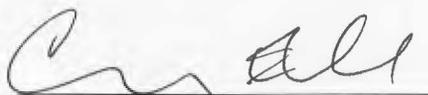
Regardless, Federal Regulation 12 C.F.R. § 1081.119(c)(3) provides that the Hearing Officer shall grant a motion for a protective order if all parties, including third parties to the extent their information is at issue, stipulate to the entry of a protective order. The below listed parties whose information is at issue in this proceeding stipulated to the entry of the protective order set forth in Attachment A:

Consumer Financial Protection Bureau Office of Enforcement, Complainant; PHH Corporation, Respondent; PHH Mortgage Corporation, Respondent; PHH Home Loans, LLC, Respondent; Atrium Insurance Corporation, Respondent; Atrium Reinsurance Corporation, Respondent; United Guaranty, Third Party; Mortgage Guaranty Insurance Corporation, Third Party; Old Republic International Corporation, Third Party; Genworth Financial, Inc., Third Party; Milliman, Inc., Third Party; Radian Group, Inc., Third Party; Essent Guaranty, Inc., Third Party.

Furthermore, based on the facts as represented by movants, I find that the protective order set forth in Attachment A is appropriate.

Accordingly, upon the joint stipulated motion of Enforcement Counsel, Respondents, and Third Parties, the protective order set forth in Attachment A is hereby issued.

ORDERED:



Cameron Elliot
Hearing Officer
Date: February 28, 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, the following definitions shall apply:

a. “Competitively Sensitive Information” means business or proprietary information that is not publicly known and that, if released to an entity’s competitors, would confer on those competitors a competitive advantage.

b. “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 and would be considered under the Freedom of Information Act personnel or medical files or a similar file the disclosure of which would constitute a clearly unwarranted invasion of personal privacy or specifically exempted from disclosure by statute.

c. “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.

d. "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.

e. "Respondents" mean PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation.

f. "Party" means the Bureau and Respondents.

g. "Third Party" means any of the third parties identified as joining in the motion for entry of this Protective Order, including any additional Third Parties who subsequently consent to the terms of this Consent Order.

h. "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; (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; or (iv) Confidential Commercial or Financial Information.

i. "Highly-Confidential Information" shall refer to any document or portion thereof that contains Competitively Sensitive Information.

j. "Confidential Commercial or Financial Information" shall refer to commercial or financial information of a kind that would customarily not be released to the public by the person from whom it was obtained.

2. **Who May Designate.** The Parties and any Third Parties, 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 or Highly-Confidential Information, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained. As set forth in paragraph 25 below (“Opportunity to Designate Confidential Information”), it is understood that the Parties to this Administrative Proceeding already have, or may have, in their possession documents received from a Third Party prior to entry of this Protective Order, which have not yet been designated as Confidential Information or Highly-Confidential Information by that Third Party pursuant to paragraph 4 below. Any Party possessing such documents of a Third Party must provide that Third Party with the opportunity to designate such Confidential Information in accordance with paragraph 25 prior to using such Confidential Information in any way in this Administrative Proceeding, or disclosing such Confidential Information to any person or entity, except that, to the extent that any Party or Third Party has already designated a document as Confidential or Highly-Confidential, by affixing a stamp or through reference in a transmittal letter, those designations shall remain as if they were affixed or noted pursuant to this Protective Order.

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 or Highly-Confidential Information shall be made by placing or affixing on the document, in a manner which will not interfere with its legibility, the words “Confidential,” in the case of Confidential Information, or the words “Highly-Confidential” in the case of Highly-Confidential Information. However, any

document already marked as confidential prior to entry of this Protective Order is subject to this Protective Order and need not be re-designated. A document may be both Confidential and Highly-Confidential under the terms of this Protective Order.

a. Except as provided by paragraph 24 below, a Party or Third Party must designate documents as Confidential pursuant to this Protective Order by describing to the producing Party the documents, pre-existing labeling, or range of documents it believes warrant the designation as Confidential Information, as defined above, within three (3) business days of receiving notice that such documents may be exchanged or used.

b. A designation of Highly-Confidential made after entry of and pursuant to 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 the designating Party believes the material so designated constitutes Highly-Confidential Information, as defined above. Only the portions of the document that meet the definition of Highly-Confidential Information shall be so designated.

c. Parties that make any filing or submission to the Hearing Officer (hereinafter "submission") that contains information or documents authored or produced by any Third Party shall, within 24 hours of their submission, serve upon the Third Party the portion of the submission that contains that Third Party's information.

d. Parties and Third Parties shall have three (3) business days (until 5:00 p.m. EST) after the filing of a submission to designate material or documents as Confidential Information or Highly Confidential Information, if not already so designated, and to provide to the filing Party a copy of the submission portion that redacts any Confidential Information or Highly-Confidential Information.

e. Parties shall provide the Office of Administrative Adjudication (OAA) a redacted submission within five (5) business days (until 5:00 p.m. EST) after the filing of a submission. The Hearing Officer will accept such redacted submission as a motion to file the unredacted submission under seal and will direct the OAA to make publicly available only the redacted submission, if any, no less than six (6) days after the original filing date of the submission.

5. **Nondisclosure of Confidential or Highly-Confidential Information.** Except with the prior written consent of the producing Party or Third Party, no Confidential Information or Highly-Confidential Information may be disclosed to any person, except as contemplated by the disclosures set forth in paragraphs 6 and 7 of this Protective Order, below.

6. **Permissible Disclosures.** Confidential Information shall be disclosed only for purposes related to this investigation and specifically 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. 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 outside counsel in the preparation or hearing of this Administrative 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. **Permissible Disclosures of Highly-Confidential Information.** Highly-Confidential Information shall be disclosed only for purposes related to this investigation, and specifically 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 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 have signed an agreement to abide by the terms of the Protective Order as set forth in Exhibit A.

8. **Submissions Sealed for Five Days.** Any submission 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 or Highly-Confidential Information shall be maintained under seal, and shall not be posted on the Bureau's website or otherwise made publicly available unless required by law. Any submission filed or lodged in any court having jurisdiction over any appellate 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 or Highly-Confidential Information shall likewise be maintained under seal in that court, if permissible under any order of that court.

9. **Litigation Use Only.** Disclosure of confidential material to any person described in paragraphs 6 and 7 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.

10. **Form at Exhibit A.** Provided, however, that in all cases set forth in subparagraphs 6(d), 6(f), 7(d), and 7(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.

11. **Duty of Counsel.** Under no circumstances shall Confidential Information or Highly-Confidential Information be shared, disclosed to or discussed with any other individual or entity not identified in paragraphs 6 or 7 above, without the prior written consent of counsel for the Parties. In addition, counsel for the Parties will take all steps necessary to ensure that any Confidential Information or Highly-Confidential Information shall be shielded from any individual or entity not identified in paragraphs 6 or 7 of this Protective Order.

12. **Declassification.** A Party shall not be obligated to challenge the propriety of a "Confidential," or "Highly-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 any 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 or Highly-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. The designating Party or Third Party shall respond in writing within three (3) business days of receipt of the written objection. If the designating Party or Third Party does not withdraw the 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 or Highly-Confidential 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 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” or Highly-Confidential.”

13. Confidential Information or Highly-Confidential Information in Oral

Testimony.

a. A witness may be shown and/or examined about Confidential Information or Highly-Confidential Information during the taking of testimony, if the witness already knows the contents of the Confidential Information or Highly-Confidential Information, or if permitted by the provisions of paragraphs 6 or 7 of this Protective Order. Witnesses shall not retain or copy portions of their transcript or deposition exhibits that contain Confidential Information or Highly Confidential Information unless they sign the form prescribed in paragraph 10 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 or Highly-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 or Highly-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 the 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 or Highly-Confidential Information within seven (7) days of its receipt. In the case of a hearing before the Hearing Officer in this Administrative Proceeding, the OAA 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," or "Highly-Confidential," then the use of the transcript will not be treated as "Confidential."

14. **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 or Highly-Confidential Information designated by another Party or Third Party 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. 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 or Highly-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.

15. **Use.** Persons obtaining access to Confidential Information or Highly-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.

16. **Right to Disclose Own Confidential Information or Highly-Confidential Information.** 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, or limit any Party or Third Party and its counsel, consultants, experts and/or litigation support vendors from making use of as they see fit, the Party's own Confidential Information or Highly-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.

17. **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.

18. **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.

19. **Inadvertent Disclosure of Confidential Information or Highly-Confidential Information.** A Party or Third Party that has inadvertently produced Confidential Information or Highly-Confidential Information without so designating it may at any time in this Administrative Proceeding redesignate such Information as “Confidential” or “Highly Confidential.” The inadvertent, unintentional, or *in camera* disclosure of Confidential Information or Highly-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 or Highly-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 Information or Highly-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” or “Highly-Confidential Information” 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. 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 or Highly-Confidential Information that were made prior to redesignation. Disclosure of such Confidential Information or Highly-Confidential Information prior to the receipt of such notice, if known, shall be reported to the designating Party.

In the event Confidential Information or Highly-Confidential Information is 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 or Highly-Confidential Information and/or to confirm that all copies of the Confidential Information or Highly-Confidential Information in the third party's possession have been destroyed.

20. **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.

21. **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" or "Highly-Confidential Information" 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.

22. **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 or Highly-Confidential Information while other copies are not so designated, all such identical or substantially identical Confidential Information shall be treated as such 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," or "Highly-Confidential."

23. **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 Information or Highly-Confidential Information. Counsel for the Parties shall keep all documents designated as "Confidential" or "Highly-Confidential" 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 or Highly-Confidential Information except for use consistent with this Protective Order.

24. **Retroactivity.** This Protective Order shall apply to any Confidential Information or Highly-Confidential Information, appropriately marked as such, that was produced by any Party prior to the Protective Order being signed.

25. **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 or Highly-Confidential Information of a Party or Third Party, which the Bureau or other Party received from that Party or Third Party prior to entry of this Protective Order, and which that Third Party has not had an opportunity to designate as Confidential Information or Highly-Confidential Information. Such information is subject to this Protective Order, and so long as a Party or Third Party timely designates such information as Confidential or Highly Confidential in accordance with this Protective Order, the Bureau, and any other Party, shall not use any Confidential Information or Highly-Confidential Information of a Party or Third Party, or any Document or other material derived from that Party's or Third Party's Confidential Information or Highly-Confidential Information, in this Administrative Proceeding, or disclose such Confidential Information or Highly-Confidential Information, or any Document or other material derived from such Confidential Information or Highly-Confidential Information in a manner inconsistent with this Protective Order.

EXHIBIT A

**AGREEMENT CONCERNING CONFIDENTIAL
INFORMATION COVERED BY PROTECTIVE 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 or Highly-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: