

**UNITED STATES OF AMERICA  
CONSUMER FINANCIAL PROTECTION BUREAU**

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IN THE MATTER OF )  
PHH CORPORATION )  
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**PHH CORPORATION'S PETITION TO MODIFY  
OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

**I. INTRODUCTION AND SUMMARY**

The Consumer Financial Protection Bureau (the "CFPB" or the "Bureau") has commenced a nonpublic investigation "to determine whether mortgage lenders and private mortgage insurance providers or other unnamed persons have engaged in, or are engaging in, unlawful acts or practices in connection with residential mortgage loans in violation of Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Financial [sic] Protection Act, 12 U.S.C. §§ 5531 and 5536, and the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq" and whether Bureau action is warranted (hereinafter, the "Investigation").

On May 22, 2012, the Bureau issued a Civil Investigative Demand ("CID") to PHH Corporation ("PHH") in connection with the Investigation, a copy of which was received by PHH on May 23, 2012. Contrary to the requirement set forth in Section 1052(c)(2) of the Dodd-Frank Act, the CID fails to identify "the nature of conduct constituting the alleged violation that is under investigation." 12 C.F.R. § 1080.5. Further, the CID is overly broad and unduly burdensome. The CID contains 21 Interrogatories (many of which have multiple subparts) and 33 Document Requests (most of which start with the term "all") (collectively, "Requests"). The Requests seek information dating back to January 1, 2001, and in many cases back to 1995. Further, many of the broadly-written Requests seek information pertaining to "private mortgage

insurance,” a requirement of many mortgage loans that is dictated by the investors/secondary market purchasers of loans, not the PHH entities engaged in mortgage loan origination.

PHH respectfully submits this Petition for an order modifying or setting aside the CID.

## II. LEGAL OBJECTIONS

### A. **The CID Fails to Identify the Nature of the Conduct Under Investigation**

Section 1052(c)(2) of the Dodd-Frank Act requires a CID to “state the nature of the conduct constituting the violation which is under investigation,” as well as citing the applicable provision of law. *See also* 12 C.F.R. § 1080.5. This explicit statutory requirement is crucial to the recipient’s ability to understand and respond to the CID, as well as to formulate appropriate objections and to challenge the overbroad aspects of the CID.

Despite this clear statutory directive, however, the CID fails to “state the nature of the conduct” at issue. Rather, the CID merely states that the “purpose of the investigation is to determine whether mortgage lenders and private mortgage insurance providers or other unnamed persons have engaged in, or are engaging in, unlawful acts or practices in connection with residential mortgage loans in violation of Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Financial [sic] Protection Act, 12 U.S.C. §§ 5531 and 5536, and the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq.” This statement completely fails to fulfill the statutory requirement and, additionally, is insufficient to provide notice to PHH regarding the nature of the investigation, as it covers every aspect of mortgage lending.

The CFPB’s authority to issue CIDs is conditioned on “the administrative steps required by the [statute] hav[ing] been followed.” *See United States v. Powell*, 379 U.S. 48, 58 (1964). Since the CID fails to comply with the Dodd-Frank Act’s requirement to “state the nature of the

conduct constituting the violation which is under investigation” and the CFPB has refused to amend the CID to comply with the statute, the CID is void and must be withdrawn.

This refusal is all the more egregious because the CFPB stated in a June 8, 2012 letter from Donald Gordon to David Souders and Mitchel Kider that the “CID is narrowly tailored to a particular practice and potential violation of law;” yet inexplicably, the CFPB refuses to “state the nature of” that particular practice in the CID, as required by the Dodd-Frank Act. It is hard to imagine a less specific statement than “unlawful acts or practices in connection with residential mortgage loans in violation of” applicable law. The failure of the CFPB to properly apprise PHH of the nature of its investigation prejudices PHH’s ability to formulate appropriate objections and to challenge the overbroad aspects of the CID.

Accordingly, the CFPB should modify the CID to clearly “state the nature of the conduct constituting the violation which is under investigation.” Absent such modification, the CID is void and must be set aside. *See* Dodd-Frank Act § 1052(f)(3) (petition for order modifying or setting aside CID “may be based upon any failure of the demand to comply with the provisions of this section”).

**B. The CFPB Is Not Entitled to Demand Materials Going Back Eleven Years Across the Board**

The CFPB can enforce any violation of a consumer financial law or regulation as a violation of Title X of the Dodd-Frank Act. The statute of limitations for such actions is three years. Dodd-Frank Act § 1054(g)(1). Moreover, there being no indication in Title X that Congress intended Section 1036 to have retroactive effect, any enforcement action under Title X cannot be predicated on acts occurring prior to July 21, 2010. In any case, the statute of limitations for RESPA actions brought by the CFPB is also three years. 12 U.S.C. § 2614.

Accordingly, the CFPB cannot take enforcement action regarding any purported RESPA violations that are more than three years old.<sup>1</sup>

The CFPB's power to issue a CID is an enforcement power (not a supervisory power) contained in Title X, Subtitle E (Enforcement Powers), and is limited to "documentary material or . . . information[] *relevant to a violation.*" Dodd-Frank Act § 1052(c)(1) (emphasis added). Documents dating years and years before any potential violation that the CFPB could enforce are *ipso facto* not "relevant to a violation."

While it is conceivable that certain documents created slightly longer than three years ago could be relevant to potential regulatory violations that are within the statute of limitations period, the CFPB's demand for documents created more than eleven years ago (and eight years prior to the statute of limitations cut-off) is wholly irrelevant to any legitimate inquiry and creates a burden that is undue as a matter of law. This, combined with the CFPB's unexplained refusal to accept the reasonable compromise offered by PHH—to produce documents going back more than six years, or double the statute of limitations period—as well as its shocking demand for certain documents going back more than 17 years, only underscores the unreasonable and overly burdensome nature of the CID.

The issue of undue burden is assessed both with respect to the burden on the day-to-day business operations of the recipient, which in this case would be substantial, and also with respect to the regulator's legitimate interest in the documents. Where the issuing regulator has no possible legitimate interest in the documents requested—such as for documents whose age is

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<sup>1</sup> On January 25, 2012, PHH voluntarily agreed to a tolling agreement with the CFPB in order to allow the agency additional time to conduct its investigation. For that reason as well, the CFPB's steadfast refusal to agree to a modest 17-day extension, or until June 29, 2012, for PHH to file its objections, which would have allowed the parties to continue to work on a resolution of the remaining issues, is particularly distressing. *See* Attachments D and E hereto (PHH's request for an extension until June 29, 2012, and the CFPB's denial of that request).

more than double the relevant statute of limitations—imposing any substantial burden on the recipient would be undue, and the CFPB’s insistence on its arbitrarily-determined time period can only be presumed to be a deliberate imposition of such a burden on PHH.

Accordingly, since documents from before 2006 cannot possibly be “relevant to a violation” within the CFPB’s jurisdiction, the CID should be modified to reflect the generous compromise offered by PHH.

**C. Certain of the Requests Are Overly Broad and Unduly Burdensome**

**1. The Applicable Relevancy and Reasonableness Standard**

Although the Bureau has broad statutory authority to investigate alleged unlawful acts or practices pursuant to Section 1052, its subpoena powers are not limitless. While Congress has provided agencies with authority to conduct reasonable investigations through the use of investigatory tools such as administrative subpoenas and CIDs, the federal courts serve as a safeguard against agency abuse by retaining the power to enforce such subpoenas and CIDs. *See, e.g., SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (“The federal courts stand guard, of course, against abuses of their subpoena-enforcement processes . . . .”) (citing *U.S. v. Powell*, 379 U.S. at 58 and *Oklahoma Press Publ’g Co. v. Walling*, 327 U.S. 186, 208 (1946)). Further, a party is entitled to notice of the nature of the alleged conduct that is the subject of the investigation. Dodd-Frank Act § 1052(c)(2); 12 C.F.R. § 1080.5 (“Any person compelled to furnish documentary material, tangible things, written reports or answers to questions . . . to the Bureau shall be advised of the nature of the conduct constituting the alleged violation that is under investigation and the provisions of law applicable to such violation.”).

Administrative agencies may not use their subpoena powers to go on fishing expeditions. *FDIC v. Garner*, 126 F.3d 1138, 1146 (9th Cir. 1997); *FTC v. Nat’l Claims Serv., Inc.*, No. S.

98-283, U.S. Dist. LEXIS 3312, at \*2 (E.D. Cal. Feb. 9, 1999). *See, e.g.*, S. Rep. 96-500 (“The FTC’s broad investigatory powers have been retained but modified to prevent fishing expeditions undertaken merely to satisfy its ‘official curiosity.’”). “It is contrary to the first principles of justice to allow a search through all the respondents’ records, relevant or irrelevant, in the hope that something will turn up.” *FTC v. Am. Tobacco Co.*, 264 U.S. 298, 306 (1924); *see also EEOC v. United Airlines*, 287 F.3d 643, 653 (7th Cir. 2002) (Administrative subpoenas require “a realistic expectation rather than an idle hope that something may be discovered.”).

The recognized standard in determining whether a CID should be set aside, or modified in scope or breadth, was adopted by the Supreme Court in *U.S. v. Morton Salt Co.*, 338 U.S. 632 (1950). Although the Court enforced the decree in *Morton Salt Co.*, it recognized that “a governmental investigation into corporate matters may be of *such a sweeping nature and so unrelated to the matter properly under inquiry* as to exceed the investigatory power.” *Id.* at 652 (emphasis added). Accordingly, the Court instructed that agency subpoenas or CIDs should not be enforced if it is determined that they demand information that is: (a) not “within the authority of the agency,” (b) “too indefinite,” or (c) not “reasonably relevant to the inquiry.” *Id.* The agency subpoena enforcement standard enunciated in *Morton Salt Co.* has been consistently applied by the courts. As the D.C. Circuit Court of Appeals recognized in *SEC v. Arthur Young & Co.*, 584 F.2d at 1030 “[t]he gist of the protection is in the requirement . . . that the disclosure sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena’s call is a matter of reasonableness.” 584 F.2d at 1030. The court explained further that “the requirement of reasonableness . . . comes down to specification of the documents to be produced adequate, but not excessive, for the purposes of the relevant inquiry.” 584 F.2d at 1030 (quoting *Oklahoma Press*, 327 U.S. at 209). The subpoena request must “not [be] so overbroad as to

reach into areas that are irrelevant or immaterial,” the court added: “the test is relevance to the specific purpose.” *Id.*, 584 F.2d at 1028, 1031. *See also EEOC v. ABM Janitorial-Midwest, Inc.*, 671 F. Supp. 2d 999, 1004 (N.D. Ill. 2009) (It is clear “that district courts are not authorized to enforce administrative subpoenas based on a construction of the statutory relevance so broad as to render the requirement a ‘nullity.’”).

Following *Morton Salt Co.*, the court in *SEC v. Blackfoot Bituminous, Inc.*, 622 F.2d 512, 514 (10th Cir. 1980), confirmed that “[t]o obtain judicial enforcement of an administrative subpoena, an agency must show that the inquiry is not too indefinite, is reasonably relevant to an investigation which the agency has authority to conduct, and all administrative prerequisites have been met.” *Id.* (quoting *U.S. v. Powell*, 379 U.S. at 57-58); *accord SEC v. Wall St. Transcript Corp.*, 422 F.2d 1371, 1375 (2d Cir. 1970). Other courts following the *Morton Salt Co.* standard have recognized that the disclosure sought by an agency through compulsory process must be both relevant to the inquiry and reasonable. *See U.S. v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1996) (“the disclosure sought must always be reasonable”); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (CID enforced only “if the information sought is ‘reasonably relevant’”); *FTC v. Texaco, Inc.*, 555 F.2d 862, 881 (D.C. Cir. 1977) (“the disclosure sought shall not be unreasonable”).

## 2. The Challenged Requests in the CID Seek Irrelevant Documents and/or Are Unreasonable

The CID does not state any specific actions or business practices it believes PHH may have pursued in violation of the Dodd-Frank Act, 12 U.S.C. §§ 5531 and 5536, or RESPA, 12 U.S.C. § 2601 *et seq.* Accordingly, the Requests that ask for “all documents” relating to the various requests noted below mean just that -- all documents. This is more than a fishing expedition, this is equivalent to an open records search of all business conducted by PHH over

the last eleven years. The CFPB may be given wide latitude in its investigations, but the inquiry cannot be “too indefinite . . . .” See *Morton Salt Co.*, 338 U.S. at 652; *Blackfoot Bituminous*, 622 F.2d at 514. These overbroad Requests will require the production of voluminous amounts of irrelevant material, and will require PHH to conduct an unreasonable search of all PHH facilities. The CFPB should limit these Requests to a reasonable inquiry based upon the actual conduct it seeks to prevent or correct—conduct the CFPB was required to, but failed to specify in the CID—and not based on a hunch that an open records search of PHH’s business records over the past eleven years may result in a violation. See *U.S. v. Constr. Prods. Research, Inc.*, 73 F.3d at 471 (“the disclosure sought must always be reasonable”); *FTC v. Invention Submission Corp.*, 965 F.2d at 1089 (CID enforced only “if the information sought is ‘reasonably relevant’”); *FTC v. Texaco, Inc.*, 555 F.2d at 881 (“the disclosure sought shall not be unreasonable”).

**D. Compliance With The Challenged CID Requests Would Be Unduly Burdensome To PHH**

An administrative subpoena may be deemed unduly burdensome if “compliance threatens to unduly disrupt or seriously hinder normal operations of a business.” *FTC v. Invention Submission Corp.*, 965 F.2d at 1090 (citing *FTC v. Texaco, Inc.*, 555 F.2d at 882). The breadth of the Requests, on their face, would require PHH to search and review every document relating to pmi and pmi reinsurance since 2001, and earlier for some of the Requests, in order to determine whether a specific document is responsive.

As the CFPB is also aware, it has sent PHH Requests that would require PHH to review every document it has produced in the last eleven years that touches on the issue of private mortgage insurance (“pmi”) and/or pmi reinsurance for relevance, and would require a significant number of man hours by PHH and/or its attorneys and any third-party vendors it may need to employ, at significant cost. That is why the CFPB’s failure to identify in the CID the



“nature of the conduct it is investigating” is so prejudicial to PHH. By simply identifying “unlawful acts or practices in connection with residential mortgage loans,” the CFPB is depriving PHH of any context in which to formulate objections. *See, e.g., EEOC v. Konica Minolta Bus. Solutions U.S.A., Inc.*, 639 F.3d 366, 369 (7th Cir. 2011) (relevance standard for administrative subpoenas is analogous to the standard in civil discovery, and thus must “appear[] reasonably calculated to lead to the discovery of admissible evidence.”). Thus, on its face, the Requests require PHH and/or its attorneys to engage in an internal investigation that could take months of continuous work to complete. PHH reserves the right to supplement this Petition with further information regarding the time and expense associated with the cost of compliance. In order to provide such information, PHH must be able to identify with specificity the materials being sought and then ascertain what is, or is not, readily available for production.

In attempting to resolve its disputes regarding a number of the Requests, PHH offered to produce a voluminous amount of materials which were readily available and then work with the CFPB if there were additional materials it believed were necessary that could, upon additional effort and expense, be produced. All that PHH requested, however, was an extension of time to file this Petition so that it could preserve its objections should the CFPB’s demands become unreasonable. However, the CFPB refused to agree to allow PHH to both produce materials and preserve its objections. Therefore, the CFPB’s refusal placed PHH in the untenable position of either filing its Petition by June 12, 2012, or waiving its objections. Further, because of the overly broad demands, it is not even possible to determine how much time, for example, is necessary to conduct a review of the materials prior to production. That is certainly true where, as here, the CFPB has not yet provided certain key information such as search terms to be used in connection with the production of emails. *See In re Grand Jury Subpoena Duces Tecum*

*Dated Nov. 15, 1993*, 846 F. Supp. 11, 12-13 (S.D.N.Y. 1994) (holding that subpoenas must seek categories of documents, not categories of filing cabinets or electronic storage devices, and quashing the subpoena in its entirety in the face of the Government's refusal to specify key word searches). For all of these reasons, PHH reserves its right to supplement this Petition with additional information regarding man hours and costs of production as it becomes available.

In short, compliance with the challenged CID Requests would result in an unreasonable and undue burden upon PHH in terms of time, cost and resources that would "unduly disrupt or seriously hinder normal operations of [its] business." *U.S. Commodity Futures Trading Comm'n v. The McGraw-Hill Companies, Inc.*, 390 F. Supp. 2d 27, 35-36 (D.C. 2005) (citing *FTC v. Texaco, Inc.*, 555 F.2d at 882) (corporation responding to agency subpoena should not have "to cull its files for data" that would "impose an undue burden" and finding subpoena requiring production of "all documents that in any way reference" the issue in question "would be unduly burdensome"). Accordingly, the CID should be modified to limit the Requests that are "excessively broad on their face and technically call for a larger volume of data than may have been intended" by the CFPB so as to "not impose an impermissible burden" on PHH. *Id.*, 390 F. Supp. 2d at 35.

The CFPB should modify the excessive CID Requests in this matter to limit the impermissible burdens imposed upon PHH which threaten to seriously disrupt its normal business operations.

### **III. ADDITIONAL GENERAL OBJECTIONS**

PHH objects generally as set forth in the numbered paragraphs below. Each of these objections is hereby incorporated by reference into each Request of the CID.

1. PHH objects to the CID to the extent it requires the production of materials already in the possession of the CFPB. During the call with the CFPB attorneys in an attempt to resolve PHH's concerns with the scope and breadth of the CID, the CFPB attorneys informed PHH's counsel that the CFPB "inherited" this "investigation" from HUD. As the CFPB is aware, the HUD OIG subpoenaed materials from Milliman, Inc., in 2008. Much of the materials subpoenaed by HUD OIG are the same materials now being demanded by the CFPB to be produced by PHH.

2. Many definitions set forth in the CID are impermissibly overbroad, unreasonable, and irrelevant to the investigation's stated purpose. *See Morton Salt*, 338 U.S. at 652-53 (noting that an administrative demand pursuant to compulsory powers must not be "too indefinite" and the information sought "shall not be unreasonable."). The all-inclusive language used by the CFPB in its definitions (*see, e.g.*, definitions B, I, J, L, P, and T) renders every request in which one of these words is used impermissibly overbroad, even for seemingly innocuous requests. Indeed, some of the definitions are nonsensical. For example, Definition B states: "And" and "or" are to be construed "both conjunctively and disjunctively, as necessary, in order to bring within the scope of any request in this Civil Investigative Demand all information that might otherwise be construed to be outside the scope of the request." Coupled with the CID's overly broad definition of "Company," "You" and "Your," and the terms "Document" and "Captive Mortgage Reinsurance Arrangement," the CID demands information on every aspect of PHH's operation relating to pmi and/or pmi reinsurance as well as every document in the possession, custody, or control of the Company and its "agents, representatives, consultants, attorneys, accountants, independent contractors, and other persons working for or on behalf of the foregoing" that touches on either of these two broad topics. *See, e.g.*, S. Rep. 96-

500 (“The FTC’s broad investigatory powers have been retained but modified to prevent fishing expeditions undertaken merely to satisfy ‘official curiosity.’”). Compliance with the Requests containing these defined words would require searching all documents, emails, letters, internal memos, and other documents and information produced in the normal course of business for any document that may mention or relate to one of the multitudinous requests by the CFPB, in electronic or physical formats. *See Nugget Hydroelectric, LP v. Pac. Gas & Elec. Co.*, 981 F.2d 429, 438-39 (9th Cir. 1992) (upholding magistrate judge’s finding that a demand for documents concerning every aspect of the defendant’s business relationships was “unnecessarily burdensome and overly broad”).

3. PHH also specifically objects to the CID’s inclusion of “agents, representatives, consultants, attorneys, accountants, independent contractors, and other persons working for or on behalf of the foregoing” as overly broad, unduly burdensome, and incomprehensible. *See* Definition I. Whether an individual or entity is acting as an “agent” is a legal conclusion, the term “consultant” is subject to multiple interpretations, the demand for information relating to “other persons working for or on behalf of” is unascertainable, and the demand for information from attorneys is indefensible.

4. Instruction E, which requires the suspension of “any routine procedures that may result in the destruction of documentary material or tangible things” in order to preserve documents “that are in any way potentially relevant to this investigation,” when coupled with the scope of the definitions, creates an unreasonable burden upon PHH to maintain a massive amount of material that would be in no way relevant to the investigation at hand. PHH has taken steps it believes are reasonable and appropriate, but without clarification on what material would be “relevant” to this investigation, which necessarily requires that the CFPB identify the nature

of the conduct that is the focus of its investigation, Instruction E effectively requires PHH to maintain every document it produces during the pendency of the Investigation.

5. Instruction I ostensibly limits the scope to documents in the possession, custody or control of PHH, but also purports to include documents in PHH's "constructive custody," an undefined term. Moreover, if the definition of "Your" is incorporated, which includes "agents, representatives, consultants, attorneys, accountants, independent contractors, and other persons working for or on behalf of" such persons, Instruction I appears to envision that the CFPB may compel PHH to produce documents not in its actual possession, custody, or control. To the extent that this instruction in fact purports to require PHH to obtain and produce documents not in its possession, custody, control, PHH objects and will not be producing any such documents or data. Any Request that seeks information from former employees or companies with whom PHH no longer works or associates, or from employees or independent contractors of such entities, is inappropriate. PHH cannot be compelled to extract information from people or entities over whom it has no access or control. *Equal Emp't Opportunity Comm'n v. Maryland Cup Corp.*, 785 F.2d 471, 479 (4th Cir. 1986) ("[The subject of an investigation] cannot be compelled to interview former supervisors who are no longer employed by the company, because the company no longer has access or control over these persons."). PHH is making a general objection to any Request seeking this information, and will renew this objection whenever appropriate and reserves the right to do so when necessary.

6. PHH reserves its right to produce responsive documents at the place where such materials are kept. *See In re Copper Mkt. Antitrust Litig.*, 200 F.R.D. 213 (S.D.N.Y. 2001) (noting that a party responding to a subpoena has the option of allowing the requesting party to inspect the documents sought where they are normally kept). Because PHH has not yet had the

opportunity to identify all potentially responsive materials, and because the CFPB has demanded that PHH file this Petition before it has had an opportunity to complete that process, PHH reserves the right to produce materials where they are kept.

7. PHH objects and expressly reserves its right to object to the CFPB's demand for a search of email communications. In its letter of June 4, 2012, PHH identified proposed custodians and requested that the CFPB provide search terms. The CFPB refused; rather, the agency demanded "a complete list of all current and former employees of Atrium, Atrium Re, and any other division of PHH involved in mortgage insurance, the selection of private mortgage insurance providers, or oversight of those functions" from at least January 1, 2001, if not earlier, although the demand is somewhat vague on this point. Then the CFPB demanded, among other things, that PHH describe each such identified individual's job function and then provide a "description of what data currently exists within that employee's custody, including its volume, format, and the date range covered by the data." *See* Attachment C, hereto. Under the CFPB's "schedule," all of this information had to be produced to the CFPB prior to June 12, or within two business days, in order to resolve any issues or objections with PHH because the CFPB has refused to extend the deadline for filing objections to the CID. The CFPB's position is unconscionable as it will not even be possible to estimate the time necessary to conduct a search of the email databases and to conduct an adequate privilege review of the potentially responsive emails until the current and former employees are identified and the search terms are provided by the CFPB. Therefore, in addition to its specific objections to the Requests below, PHH objects to the production of any emails until the CFPB provides the identification of the individuals for whom searches are to be performed and it identifies search terms to be used to conduct those searches.

## V. THE CHALLENGED CID REQUESTS

PHH endeavored to resolve its concerns regarding the CID with the CFPB prior to the filing of this Petition. Specifically, the undersigned attorneys conducted a lengthy conference call with various attorneys for the CFPB including, among others, Donald Gordon and Kim Ravener. Thereafter, on June 4, 2012, PHH sent Mr. Gordon a lengthy detailed letter explaining its various concerns and objections to a number of the Requests with a proposed resolution. *See* Attachment A, hereto. Thereafter, on June 8, 2012, PHH received a letter dated June 7, 2012, from Kent Markus, Chief of Enforcement, which accepted some of PHH's proposed resolutions but rejected others. *See* Attachment B, hereto. The same day, PHH received a second letter from the CFPB purporting to explain the justifications for the rejection of some of PHH's proposals and detailing additional requests for information regarding the requests for the production of email. *See* Attachment C, hereto. Thus, while a number of the issues were resolved, and PHH intends to commence production of the materials that it has agreed to produce in spite of its continuing objections to the breadth and scope of the CID, the CFPB refused to extend the deadline for PHH to file this Petition to modify or set aside the CFPB's broadly-worded CID. The CFPB's presentation of a Hobson's choice is disconcerting. Rather than continuing to work with PHH regarding its objections and concerns with the burden the agency is placing on the Company, the CFPB has left PHH with no choice but to file this Petition or otherwise it will be deemed to have waived any objections to the CID.

In addition, PHH objects to the production of any privileged material as denoted within the descriptions below, and reserves the right to object on the grounds of privilege to any request whenever it may become apparent that a particular request implicates privileged material.

Because of the sweeping breadth and scope of the CID, PHH is reproducing each Request in full and stating its objections immediately thereafter.

### **INTERROGATORIES**

Interrogatory No. 2: State the Company's correct legal name and principal place of business; the date and state of incorporation; all trade names under which the Company has done business; and the names, titles, and dates of employment of all officers, directors, and principal stockholders or owners.

PHH's Objections and Proposed Compromise: PHH objects to this Interrogatory as overly broad and unduly burdensome and not likely to lead to the discovery of relevant information as it seeks information from January 1, 2001, forward. In addition, information such as the "correct legal name, principal place of business; the date and state of incorporation; all trade names under which the Company has done business," as well as the names and titles of officers and directors, is available from the Company's SEC filings, to which the CFPB has full and complete access. Further, PHH is a publicly-held corporation so the names of "principal stockholders" is also available to the CFPB from public sources.

In an effort to try to resolve its objections, PHH offered to provide the names of individuals at PHH with primary responsibility for managing and monitoring PHH's relationship with Atrium/Atrium Re for the period of time from January 1, 2006, forward (which is three years prior to the earliest date on which the CFPB could bring an enforcement action), and to provide documents, including materials filed with the State of New York (for Atrium) and Vermont (for Atrium Re), which will provide this information for the reinsurance entity for a substantially longer period of time. Further, PHH informed the CFPB that, in the event the CFPB identifies a more specific period of time for which it is seeking information regarding officers, PHH will consider providing such information. The CFPB rejected PHH's proposed



compromise; accordingly, PHH was forced to file this Petition objecting to the Interrogatory as drafted.

Interrogatory No. 4: Describe the complete management structure of any component of the Company involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance, identifying all current and former management and supervisory employees, officers and directors (including contractors, if applicable), and any changes in the applicable time period. Information regarding mortgage insurance reinsurance shall be provided since Inception.

PHH's Objections and Proposed Compromise: PHH objects to this Interrogatory as overly broad and unduly burdensome and not likely to lead to the discovery of relevant information. In addition, as noted previously, PHH believes that it is inappropriate to demand information relating to all aspects of "private mortgage insurance" as is done in this Interrogatory.

In an attempt to resolve this matter, PHH offered to produce documents regarding the management structure of Atrium and Atrium Re for the period of time since January 1, 2006, in lieu of a written response. Further, PHH offered to produce, to the extent available, documents that demonstrate the management structure of Atrium in 1995, i.e., the year of the first reinsurance agreement which was between Atrium and United Guaranty Insurance ("UGI"). PHH explained to the CFPB that the management structure of Atrium did not change significantly over time but also noted that if the CFPB provided specific limited dates outside of the periods identified above, PHH would provide additional information if the request is more narrowly tailored than the request for all information since 1995. In addition, in response to this Interrogatory, PHH offered to provide the names of the individuals at PHH most responsible for the monitoring of the relationship between PHH and Atrium, and Atrium and the pmi providers with whom it had a reinsurance arrangement for the period from January 1, 2006, forward, as well as the individuals with those responsibilities at the inception of the four reinsurance arrangements to the extent that information is available. The CFPB rejected PHH's proposed

compromise; accordingly, PHH was forced to file this Petition objecting to the Interrogatory as drafted.

Interrogatory No. 5: Identify all current and former management and supervisory employees employed by the Company (including contractors, if applicable) with responsibilities relating to private mortgage insurance or mortgage insurance reinsurance since January 1, 1995. For each employee, state all current and former titles or positions and the dates each such current and former title or position was held.

PHH's Objections and Proposed Compromise: See PHH's Position re: Interrogatory No. 4. As with Interrogatory No. 4, PHH objects to Interrogatory No. 5 as overly broad and unduly burdensome and not likely to lead to the discovery of relevant information. In addition, as noted previously, PHH believes that it is inappropriate to demand information relating to all aspects of "private mortgage insurance" as is done in this Interrogatory. PHH also believes, and as it explained previously to the CFPB, that the documents and other information provided in response to Interrogatory No. 4 should be sufficient for the CFPB's investigation. PHH also noted, however, that if the CFPB believes that additional information is necessary, PHH requested that it identify with greater specificity that information and PHH committed to working with the CFPB to produce it. The CFPB rejected PHH's proposed compromise; accordingly, PHH was forced to file this Petition objecting to the Interrogatory as drafted.

Interrogatory No. 7: With respect to any instance identified in response to Interrogatory 6, describe every document preservation request or obligation directed to or imposed upon the Company, including the specific nature and extent of the documents sought to be preserved, the exact date that such request or obligation was transmitted to the Company, and the exact date when such request or obligation expired, or will expire.

PHH's Objections and Proposed Compromise: PHH objects to this Interrogatory as irrelevant and not calculated to lead to the discovery of relevant information. The CFPB is not a party to any of the litigation identified in response to Interrogatory No. 6; accordingly, its demand for this information is simply an attempt to insert itself into those actions.

During the course of its discussions with the CFPB, PHH asked the CFPB to identify how the information sought in this Interrogatory is possibly relevant to any legitimate inquiry on its part. If the CFPB could identify the relevance of this requested information, PHH agreed to reconsider its position on this Interrogatory. The CFPB refused to provide any additional support for this Interrogatory; accordingly, PHH was forced to file this Petition objecting to the Interrogatory as drafted.

Interrogatory No. 16: For each Reinsurance Policy Year since Inception, state the following as of December 31<sup>st</sup> of each calendar year:

- a. the number of loans insured and reinsured;
- b. the outstanding principal of the loans identified in response to Subpart a. of this Interrogatory;
- c. the Mortgage Insurance Provider's risk in force;
- d. the Reinsurance Entity's Risk in Force; and
- e. the number of loans in default.

Provide your response in a separate Excel spreadsheet for each Captive Trust, listing each response as a separate row and each category (a through e) as a separate column.

PHH's Objections and Proposed Compromise: PHH does not understand the CFPB's refusal to work with PHH regarding this Interrogatory. As PHH explained previously to the CFPB, it believes that this Interrogatory, along with Interrogatory Nos. 8-15, were overly broad and unduly burdensome. In response, the CFPB agreed to allow PHH to submit certain financial information, e.g., financial statements, cession statements, general ledgers and other existing documents in response to Interrogatory Nos. 8-15, but refused to allow the production of this same type of information in response to Interrogatory No. 16. The CFPB did not bother to explain why it rejected PHH's position with respect to Interrogatory No. 16; accordingly, PHH was forced to file this Petition objecting to the Interrogatory as drafted.

In addition to its other objections, PHH believes that the CFPB is already in possession of some or all of the information sought in connection with this Interrogatory as part of the

investigation it “inherited” from HUD; accordingly, there is no basis to request the same information from PHH.

Interrogatory No. 17: Describe each type of loan made by the Company which was covered by a private mortgage insurance policy, but which was excluded from mortgage insurance reinsurance by the Company at any time. For each such type of loan, identify any operative agreement or amendment to an agreement authorizing such exclusion from reinsurance and the time period during which such exclusion was effective.

Interrogatory No. 18: Describe all systems or models used by the Company in underwriting or pricing mortgage insurance reinsurance.

PHH’s Objections to Interrogatory Nos. 17 and 18 and Proposed Compromise: PHH objects to Interrogatory Nos. 17 and 18 as overly broad and unduly burdensome primarily because of the temporal scope of the requests.

In order to resolve its concerns, PHH offered to provide a response to these two interrogatories with documents that are readily available as well as written responses if the CFPB will extend the time for providing the responses. The CFPB did not agree to extend the time for providing this information, nor did it explain why it would not extend the time to provide this information, thus forcing PHH to file this Petition objecting to the Interrogatories as drafted.

Interrogatory No. 21: If there are documents that would have been responsive to any of the requests for documents set forth below, which were destroyed, misplaced, transferred, deleted, altered, or over-written, identify the documents and explain why they cannot be produced.

PHH’s Objections and Proposed Compromise: PHH objects to this Interrogatory as vague, unduly burdensome and not capable of being responded to in the absence of the complete identification of all records that are, in fact, responsive to the Requests for Documents. As stated above, PHH believes that the time period for the requested information, both Interrogatories and Requests for Documents, is unduly excessive; accordingly, until that issue is resolved for each specific demand, it would be impossible to respond to this inquiry.

During the telephone call on Tuesday, May 29, 2012, the CFPB indicated that this particular request was designed to ascertain whether there was any significant loss of information or data due to some extraordinary event such as a fire or a wholesale loss of information due to a computer malfunction. PHH is not aware of any such event that would impact information relating to Atrium/Atrium Re and its reinsurance arrangements with the four pmi providers. However, to the extent documents were destroyed as a result of routine document destruction policies, or were removed to back-up tapes and drives, such information is either no longer available, or not readily available to PHH. However, the CFPB did not advise PHH whether it had provided a sufficient response to this Interrogatory, or whether additional information was being sought; accordingly, PHH was forced to file this Petition objecting to the Interrogatory as drafted.

### **DOCUMENTS**

Request No. 1: All documents relied upon to complete any of the Interrogatories set forth above. PHH's Objections and Proposed Compromise: As explained above, PHH objects to several of the Interrogatories as excessive in scope as well as the time period for which materials and information is requested. In addition, several of the Interrogatories include general questions regarding pmi. PHH has committed to produce a significant amount of materials in response to the Interrogatories; however, until PHH's objections regarding the Interrogatories are resolved, it is not possible to ascertain what documents must be subsequently produced. For that reason, PHH continues to object to this Document Request.

Request No. 2: Organization charts of the Company sufficient to show each entity involved in Captive Mortgage Reinsurance Arrangements, and describe each such entity's role in such practices. To the extent that the identity of such entity or its direct or indirect ownership has changed during the applicable time period, submit organization charts sufficient to reflect and

explain such change. If such documents were completely and accurately provided in response to the Bureau's letter dated January 3, 2012, certify their completeness and accuracy.

PHH's Objections and Proposed Compromise: PHH objects to the demand for information on each entity for the entire period from January 1, 2001, forward as overly broad and unduly burdensome. PHH also objects to the request for documents "describ[ing] each such entity's role in such practices," as overly broad. The "role" of Atrium/Atrium Re in providing reinsurance is set forth in the four specific agreements and various amendments thereto, which PHH has already agreed to produce to the CFPB.

In an effort to resolve this matter with the CFPB, PHH offered to provide documents relating to the organizational structure of Atrium/Atrium Re and PHH Corporation for the period from January 1, 2006, to the present. The CFPB apparently rejected PHH's proposed compromise although no reason was provided to PHH. Accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 3: Organization charts showing the complete management structure of any component of the Company involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance, identifying all current and former management and supervisory employees, officers, directors, or contractors, and any changes during the applicable time period.

PHH's Objections and Proposed Compromise: PHH objects to the demand for information on each entity for the entire period from January 1, 2001, forward as overly broad and unduly burdensome. Further, as PHH previously explained to the CFPB, it does not now, nor has it ever, offered, provided, or "operat[ed]" private mortgage insurance. PHH also explained to the CFPB that it was not sure what is meant by the request for charts showing the management structure of an entity that "monitor[s]" private mortgage insurance. The requirement for pmi is one imposed by the investor. Since 2001, the majority of loans originated by PHH affiliates were sold to FNMA or FHLMC; accordingly, the requirement for pmi comes from those entities.

The CFPB did not bother to clarify its Request or to otherwise assist PHH in understanding what information it was specifically looking for.

In an effort to resolve its objections regarding this specific Document Request, PHH offered to produce documents sufficient to demonstrate the management structure of Atrium/Atrium Re during the period from January 1, 2006, to the present. In addition, PHH also advised the CFPB that the New York Department of Insurance performed two audits of Atrium, one in 2001 and a second in 2007. Those documents are publicly available on the website of the New York Department of Financial Services. Those audits contain information regarding the management structure of Atrium for those two specific time periods. PHH also advised the CFPB that if it was interested in other limited specific time periods, that PHH would respond if the information was readily available. The CFPB rejected PHH's offer; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 5: All documents reflecting or embodying communications relating to actual or potential Captive Mortgage Reinsurance Arrangements, between the Company and any of the following:

- a. any Mortgage Insurance Provider;
- b. any third party identified in response to Interrogatory No. 19; and
- c. any federal, state, or local government agency or regulator.

PHH's Objections and Proposed Compromise: PHH objects to this Request as overly broad, unduly burdensome, and not calculated to lead to the production of information relevant to Atrium's/Atrium Re's reinsurance arrangements. Among other things, this Document Request is overly broad in that it seeks information from January 1, 2001, forward. Also, as PHH explained previously to the CFPB, PHH does not understand the request to the extent it seeks information regarding "potential" Captive Mortgage Reinsurance Arrangements because since at least January 1, 2006, PHH was not aware of any discussions with any entity regarding a "potential" new pmi reinsurance arrangement. Further, whether there was consideration of a "potential"

reinsurance arrangement is irrelevant to any inquiry by the CFPB. Further, PHH also explained to the CFPB that its affiliates originate tens of thousands of loans every year, a large number of which require pmi as a condition of origination, which is a condition placed on originators by the investors, typically FNMA and FHLMC. There are likely extensive communications with the pmi providers relating to individual loans, some of which may mention or touch upon the fact that the particular loan is part of a reinsurance book of business between Atrium/Atrium Re and the pmi provider. Without reviewing all of those documents, it would be impossible to respond to this request for “all documents.” Curiously, in the CFPB’s letter of June 8, 2012, it states that “the CID does not seek documents pertaining to the loan files of individual consumers.” See Attachment \_\_\_, hereto. However, that revision to the Document Requests, which is characterized as a “clarifi[cation]” was not set forth in the letter from Mr. Markus. For that reason as well, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 6: All reports, summaries, or presentations, or drafts of the same, relating to Captive Mortgage Reinsurance Arrangements, since the Inception of any Reinsurance Entity to which the document(s) relate(s).

PHH’s Objections and Proposed Compromise: PHH objects to the demand for “[a]ll reports, summaries, or presentations, or drafts of the same” for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome. Among other things, this Document Request is overly broad in that it seeks information from the inception of the various agreements.

In an effort to resolve its objections to this Document Request, PHH provided the CFPB with a sample of a Milliman metrics report, which contains historical information regarding the reinsurance arrangements. In addition, PHH agreed to produce cession statements from the pmi providers, as well as Atrium/Atrium Re year end financials that are readily available. Finally,



PHH requested that the CFPB narrow the scope of this particular Request or, in the alternative, agree to hold it in abeyance until it reviews the other materials and documents that PHH is producing. The CFPB rejected PHH's offer of compromise without providing any reason for its rejection; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 7: All documents since the Inception of each Reinsurance Entity relating to the creation, promotion, or marketing of actual or potential Captive Mortgage Reinsurance Arrangements, including but not limited to presentations, requests for proposals, negotiations and responses.

PHH's Objections and Proposed Compromise: PHH objects to the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome. Among other things, this Document Request is overly broad in that it seeks information from the inception of the various agreements, both actual and "potential."

In an effort to resolve its objections, PHH advised the CFPB that it was not aware of any documents responsive to this Request that were created during the period of time from January 1, 2006, to the present. Further, PHH is not aware of any documents it would have created regarding the promoting or marketing of Captive Mortgage Reinsurance Arrangements. PHH is not aware of any discussion with any entity regarding a "potential" new pmi reinsurance arrangement with PHH. With respect to documents within the possession, custody or control of PHH that were created prior to January 1, 2006, that relate to one of the four reinsurance arrangements entered into by Atrium and are readily available, PHH offered to produce those materials; however, it informed the CFPB that it will require an additional period of at least 30 days to conduct a search for such materials. The CFPB rejected PHH's offer of compromise without providing any reason for its rejection; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 8: All documents since the Inception of each Reinsurance Entity relating to the legality, profitability, costs, risks, finances, conditions, or structure of Captive Mortgage Reinsurance Arrangements.

PHH's Objections and Proposed Compromise: PHH objects to the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome. In addition, PHH specifically objects to the CFPB's request for production of documents protected by the attorney-client privilege and/or the attorney work product doctrine in response to this Request. Under the terms of the CID, the CFPB demands that all objections be raised "no later than the date set for the production of the material." *See* CID Instruction D. Until PHH is fully apprised regarding the appropriate temporal scope of this Request, and it is afforded a reasonable opportunity to search for, identify, and review responsive documents, it cannot properly formulate its privilege objections. The CFPB's demand that PHH provide its privilege objections by June 20, 2012, the original date in the CID, or by June 29, 2012, the date of PHH's first agreed production is unreasonable.

In an effort to resolve its objections regarding this Document Request, PHH provided the CFPB with a sample of a Milliman metrics report, which contains historical information regarding the reinsurance arrangements. In addition, PHH agreed to produce cession statements from the pmi providers, as well as Atrium/Atrium Re year end financials that are readily available. PHH also agreed to produce all of the risk transfer opinions prepared by Milliman for Atrium. Finally, PHH requested that the CFPB narrow the scope of this particular Document Request or, in the alternative, agree to hold it in abeyance until it reviews the other materials and documents that PHH agreed to produce. The CFPB rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 9: All documents since the Inception of each Reinsurance Entity relating to the purpose of Captive Mortgage Reinsurance Arrangements, including, but not limited to, decisions to seek, maintain, develop, or cancel Captive Mortgage Reinsurance Arrangements.

PHH's Objections and Proposed Compromise: PHH objects to the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome. Among other things, the demand for documents "relating to the purpose of Captive Mortgage Reinsurance Arrangements" is unduly vague and subject to multiple interpretations.

In an effort to resolve its objections regarding this Document Request, PHH requested that the CFPB narrow the scope of this particular Request or, in the alternative, agree to hold it in abeyance until it reviews the other materials and documents that PHH is producing. The CFPB rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 10: All documents relating to any proposed, contemplated, or actual contract or agreement or any modifications of such agreements between you and any Mortgage Insurance Provider. This request includes, but is not limited to, any notes or records of any oral, written, or implied contract or agreement for the purchase of mortgage insurance or reinsurance, trust agreement, commutation agreement, retrocession agreement, indemnification agreement, security agreement, participation agreement, and any related amendment.

PHH's Objections and Proposed Compromise: PHH objects to the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome. Among other things, the demand for documents "relating to any proposed, contemplated, or actual contract or agreement or any modifications of such agreements between you and any Mortgage Insurance Provider" is unduly vague and subject to multiple interpretations. In addition, in order to respond to this demand, PHH will be required to interview everyone that was ever involved in any discussions with any mortgage insurance

provider since at least January 1, 2001, and possibly earlier since this Document Request does not contain a specific time limitation.

In an effort to resolve its objections regarding this Document Request, PHH requested that the CFPB narrow the scope of this particular Request or, in the alternative, agree to hold it in abeyance until it reviews the other materials and documents that PHH is producing. The CFPB rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 17: All documents relating to the selection of Mortgage Insurance Providers or allocation of business among Mortgage Insurance Providers by the Company, or to any contemplated or actual increase, decrease or elimination of business with a particular Mortgage Insurance Provider, including but not limited to any scorecards, spreadsheets, formulas, or other system of selection and any documents embodying negotiations, deliberations, or discussions thereof.

PHH's Objections and Proposed Compromise: PHH objects to this demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome. In addition, the request for information regarding the selection of a pmi provider regardless of whether there was a reinsurance arrangement in place demonstrates that this Document Request seeks irrelevant information.

PHH sought to resolve its objections with the CFPB by agreeing to produce information such as the deposition transcript of Mark Danahy that was taken in connection with the *Munoz* litigation which contains an explanation of the allocation of business among various pmi providers, including those with which Atrium did not have a reinsurance agreement. In addition, PHH agreed to produce the documents produced in the *Munoz* litigation that relate to the criteria used to establish the dialer system that allocated loans to various pmi providers that offered pmi for the specific type of loan at issue. The CFPB rejected PHH's offer of compromise without

comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 18: All documents relating to the policies and procedures for communicating to consumers the selection of a Mortgage Insurance Provider.

PHH's Objections and Proposed Compromise: PHH objects to this Document Request as overly broad and unduly burdensome to the extent it seeks documents not tied in any respect to the issue of pmi reinsurance.

In an effort to resolve its objections, PHH agreed to produce exemplars of the affiliated business disclosures that were provided to consumers at various times since at least 2006 which disclose the possibility that Atrium may provide pmi reinsurance in connection with the customer's loan and that the customer is free to shop around and use a different pmi provider. PHH also agreed to attempt to provide additional information if the CFPB narrowed the Document Request and limited the temporal scope of its demands. However, the CFPB simply rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 19: All templates or scripts of any written or oral disclosures provided by the Company to consumers regarding mortgage insurance, including, but not limited to the reasons for requiring mortgage insurance, the amount of mortgage insurance coverage purchased, and the selection of a particular Mortgage Insurance Provider.

PHH's Objections and Proposed Compromise: PHH objects to this Document Request as overly broad and unduly burdensome to the extent it seeks documents regarding mortgage insurance, not tied in any respect to the issue of pmi reinsurance. In addition, as explained in response to Document Request Nos. 3 and 5, the requirement for pmi is one places on PHH by the investor, typically FNMA or FHLMC. Accordingly, issues such as "the amount of mortgage insurance

coverage purchased” is unrelated to the issue of pmi reinsurance, and therefore irrelevant to the CFPB’s inquiry.

In an effort to resolve its objections, PHH agreed to produce exemplars of the affiliated business disclosures that were provided to consumers at various times since at least 2006 which disclose the possibility that Atrium may provide pmi reinsurance in connection with the customer’s loan and that the customer is free to shop around and use a different pmi provider. PHH also agreed to attempt to provide additional information if the CFPB narrowed the Document Request and limited the temporal scope of its demands. However, the CFPB simply rejected PHH’s offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 20: All templates or scripts of any disclosure provided by the Company to consumers regarding the Company’s interest in any reinsurance entity.

PHH’s Objections and Proposed Compromise: PHH objects to this Document Request as overly broad and unduly burdensome to the extent it seeks documents not tied in any respect to the issue of pmi reinsurance.

In an effort to resolve its objections, PHH agreed to produce exemplars of the affiliated business disclosures that were provided to consumers at various times since at least 2006 which disclose the possibility that Atrium may provide pmi reinsurance in connection with the customer’s loan and that the customer is free to shop around and use a different pmi provider. PHH also agreed to attempt to provide additional information if the CFPB narrowed the Document Request and limited the temporal scope of its demands. However, the CFPB simply rejected PHH’s offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 21: All documents relating to the 1997 HUD Retsinas Letter.

PHH's Objections and Proposed Compromise: PHH objects to this Document Request as overly broad and unduly burdensome both in breadth and temporal scope. In addition, PHH believes that the CFPB already has this information because HUD previously subpoenaed this information from Milliman, the entity that provided Atrium with a number of risk transfer opinions.

In an effort to resolve its concerns, PHH informed the CFPB that it would agree to produce the risk transfer opinions it obtained from Milliman, which specifically reference the "1997 HUD Retsinas Letter." However, the CFPB simply rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 22: All actuarial studies, reports, opinions, memoranda, internal reviews, or statements, and all related documents and underlying work papers, concerning risk transfer in Captive Mortgage Reinsurance Arrangements, including but not limited to risk transfer requirements under the Financial Accounting Standards Board (FASB), Statutory Accounting Principles (SAP), Emerging Issues Task Force (EITF), Generally Accepted Accounting Principles (GAAP), or National Association of Insurance Commissioners (NAIC).

PHH's Objections and Proposed Compromise: PHH objects to this Document Request as overly broad and unduly burdensome both in breadth and temporal scope. In addition, PHH objects to the demand for "all related documents and underlying work papers" as unduly burdensome and unnecessary. Further, PHH believes that the CFPB already has this information because HUD previously subpoenaed this information from Milliman, the entity that provided Atrium with a number of risk transfer opinions. However, the CFPB has refused to identify what materials it already has in its possession and instead has demanded that PHH "reproduce" all such materials.

In an effort to resolve its concerns, PHH informed the CFPB that it would agree to produce the risk transfer opinions it obtained from Milliman. However, the CFPB simply

rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 23: All documents provided to or received from any actuary, financial analyst, auditor, outside consultant or any other person outside the Company, relating to the preparation of any document, including any draft, outline, or other preliminary document, produced in response to Document Requests No. 21 or 22 of this CID.

PHH's Objections and Proposed Compromise: See PHH's Position re: Document Request Nos. 21 and 22.

Request No. 25: All documents relating to any financial, business, or investment assessment or analysis of any aspect of any Captive Mortgage Reinsurance Arrangement, including but not limited to, rating agency reports or other analyst reports.

PHH's Objections and Proposed Compromise: PHH objects to the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome. Further, there are numerous SEC filings by PHH which refer to Atrium/Atrium Re, all of which are publicly available to the CFPB.

In order to resolve its concerns with this Request, PHH offered to produce the previously identified risk transfer opinions it obtained from Milliman, as well as the previously identified Milliman metric reports, all of which contain information responsive to this Request. However, the CFPB simply rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 26: All reports or financial statements relating to mortgage insurance reinsurance filed with any state regulatory agency identified in response to Interrogatory 20 since the Inception of the relevant Reinsurance Entity, including but not limited to, Vermont Captive Insurance Annual Reports and Audited Statutory Financial Statements.

PHH's Objections and Proposed Compromise: PHH objects to the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome.



In an effort to resolve its objections regarding this Document Request, PHH agreed to produce copies of all reports and financial statements filed with the New York and Vermont regulators that are readily available if the CFPB would agree to allow PHH an additional period of 30 days in which to complete its production in response to this request. PHH further stated that if, after reviewing the information produced, the CFPB believed that additional materials were necessary, PHH offered to search its archives and stored files for additional historical information. However, the CFPB simply rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 29: All documents relating to the underwriting or pricing of mortgage insurance reinsurance.

PHH's Objections and Proposed Compromise: PHH objects to the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome.

In connection with its efforts to resolve its objections with this Document Request, PHH explained to the CFPB that, in general, the charge by Atrium/Atrium Re for reinsurance is set forth in the various agreements between Atrium/Atrium Re and the pmi providers. Therefore, PHH offered to produce those agreements as a response to this request. The CFPB simply rejected PHH's offer of compromise without comment or explanation; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 30: All documents prepared by or provided to the Company's Board of Directors or any committee of the Board of Directors relating to the Company's Reinsurance Entity or Captive Mortgage Reinsurance Arrangements, including but not limited to all reports, summaries, presentations, emails, meeting minutes, or meetings agendas.

PHH's Objections and Proposed Compromise: PHH objects to the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place as overly broad and unduly burdensome.

In an effort to resolve its objections, PHH offered to produce information that is readily available if the CFPB agreed to give PHH an additional period of 45 days in which to locate and review this information prior to production. The CFPB simply rejected PHH's offer of compromise without comment or explanation, nor did it agree to the requested additional time; accordingly, PHH was forced to file this Petition objecting to the Document Request as drafted.

Request No. 33: Documents sufficient to describe the Company's document retention and destruction policies, including, but not limited to, any documents changing, altering, or suspending those policies and procedures.

PHH's Objections and Proposed Compromise: PHH does not believe that this request is relevant to the CFPB's investigation. PHH believes that all relevant documents and information has been retained.

#### **VI. THE CFPB'S REFUSAL TO GRANT A REASONABLE EXTENSION IS ARBITRARY AND CAPRICIOUS**

The CFPB's refusal to grant a reasonable extension of time to file a petition to modify or set aside the CID, as set forth in the June 11, 2012 letter from Mr. Markus to Messrs. Kider and Souders, is arbitrary and capricious in light of the parties' ongoing discussions concerning the scope of the CID. The CFPB cannot force PHH to waive its administrative remedies before the CFPB commits to limiting the scope of the CID. Moreover, in light of the CFPB's refusal to "state the nature of the conduct constituting the violation which is under investigation," PHH's ability to formulate specific objections within the time allotted is severely limited.

First, it is a matter of common courtesy among attorneys to agree to reasonable extensions of time. *See, e.g.*, Standard No. 10, D.C. Bar Voluntary Standards of Civility in

Professional Conduct (“We will agree to reasonable requests for extensions of time and for waiver of procedural formalities provided our clients’ interests will not be adversely affected.”). The CFPB’s refusal to grant such an extension with respect to the instant CID—where the CFPB would in no way be prejudiced—is contrary to accepted practice and is an abuse of the CFPB’s discretion. The regulation’s statement that “[r]equests for extension of time are disfavored” is not to the contrary. Rather, as federal courts uniformly hold in applying similar provisions in their local rules, a general policy disfavoring extensions does not apply where there is cause for the extension, such as is described below. The same logic is even more applicable here, where the CFPB is an opposing party and not a court.

Second, the CFPB states that it is “willing to work with the list of custodians that [PHH] provided as a starting point to narrow the scope of electronic mail searches,” but will not commit to limit production to that list of custodians and demands additional information before providing even a partial list of search terms. (June 8, 2012 Letter from Mr. Gordon to Messrs. Kider and Souders). Yet despite the uncertain scope of the CID as reflected in that statement, the CFPB refuses to grant an extension of time to PHH. The CFPB has thus far refused to provide a list of search terms, yet, for example, purports to require PHH to provide specific details of the burden that the unknown search terms would impose. This “dual-tracking,” by which the CFPB attempts to delay final clarification of the CID’s scope until after the deadline for PHH to petition to modify or set aside the CID *based on its scope* is arbitrary and capricious.

The CFPB’s refusal to grant a reasonable extension of time has forced PHH to expend resources to prepare and submit a petition where none might have been necessary had the extension been granted, and functions as an impermissible attempt to force PHH to choose between working with the CFPB to narrow the scope of the CID and waiving its administrative

rights. Accordingly, PHH respectfully notes that it will not abide any attempt to imply a waiver of PHH's objections (as stated now or in the future) based upon a purported lack of detail in its objections, occurring as a result of the "dual-tracking" described above.

**VII. CONCLUSION**

The CID served on PHH on May 23, 2012, fails to comply with the statute governing such administrative demands and is, on its face, impermissibly broad, unreasonable, and designed to inflict damage on PHH's operations. PHH recognizes the CFPB's investigatory powers, and the Company is willing to work with the CFPB on the production of information and documents that will advance its investigation. However, the CID, as currently written, places an undue burden on PHH to comply with it, and the CFPB's refusal to allow the parties additional time to negotiate a resolution by extending the time for filing objections is arbitrary and unreasonable. Therefore, the CID is unenforceable and PHH requests that the CID be modified in a manner reasonably designed to extract relevant information or, alternatively, set aside.

Respectfully submitted,

By:

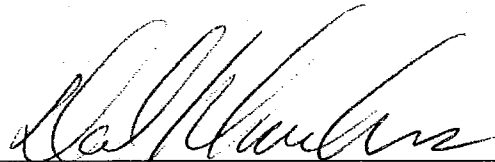


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***Counsel for PHH Corporation***

**CERTIFICATION**

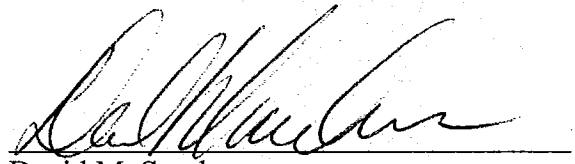
Pursuant to 12 C.F.R. § 1080.6(d)(1), counsel for petitioner PHH Corporation, hereby certifies that they have conferred with counsel for the Consumer Financial Protection Bureau by phone, e-mail and letter correspondence in a good faith effort to resolve by agreement the modifications sought by this Petition, but have been unable to reach an agreement. Among other things, PHH Corporation sought a modest extension of time until June 29, 2012, in which to file its Petition to Modify or Set Aside Civil Investigative Demand in order to allow the parties additional time to resolve their differences and that request was denied by Kent Markus, Chief of Enforcement, on June 11, 2012.



David M. Souders

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of June, 2012, I caused the original of the Petition to Modify or Set Aside Civil Investigative with attachments to be filed by hand delivery to Jeffrey Riley, Executive Secretary of the Consumer Financial Protection Bureau, 1700 G Street, N.W., Washington, DC 20552; and a copy of the same to be served on Kent Markus, Chief of Enforcement, by electronic and first class mail delivery at 1700 G Street, N.W., Washington, DC 20552.



David M. Souders

# **ATTACHMENT A**

**WEINER  
BRODSKY  
SIDMAN  
KIDER PC**

June 4, 2012

**BY EMAIL DELIVERY****CONFIDENTIAL COMMUNICATION**

Donald R. Gordon  
Enforcement Attorney  
Consumer Financial Protection Bureau  
1750 Penn. Ave. N.W., 10th Floor  
Washington, DC 20220

Dear Mr. Gordon:

We are writing on behalf of our client, PHH Corporation ("PHH"), to follow up on our telephone call on May 29, 2012, regarding the Civil Investigative Demand ("CID") from the Consumer Financial Protection Bureau ("CFPB" or the "Bureau") dated May 22, 2012. In the spirit of cooperation, we are writing in an effort to resolve our concerns with the CID in a manner that both provides the CFPB with the information necessary to understand the private mortgage insurance ("pmi") reinsurance arrangement between Atrium Insurance Corporation ("Atrium," now Atrium Re),<sup>1</sup> and certain unrelated pmi providers and avoids unnecessary and inappropriate burdens on PHH. In that vein, this letter identifies the specific concerns and potential narrowing of certain of the requests for purposes of PHH's initial production. PHH recognizes the CFPB's right to request additional information, and PHH reserves all of its rights to contest any requests for additional information.

As we stated during our call, we believe that the CID is overly broad and unduly burdensome in a number of respects. Further, we believe that because of the manner in which reports are prepared, current reports contain all of the relevant historical data such that the burden on PHH can be minimized by not requiring the production of every past

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<sup>1</sup> On November 12, 2009, PHH Corporation formed Atrium Reinsurance Corporation ("Atrium Re"), a Vermont corporation that is a wholly-owned subsidiary of PHH Corporation. On January 25, 2010, the New York Insurance Department issued its non-disapproval of the reinsurance assumption agreements between Atrium and Atrium Re, thereby allowing Atrium Re to assume the reinsurance agreements with Genworth Mortgage Insurance Company ("Genworth") and AIG United Guaranty Mortgage Insurance Company ("UGI"). In March 2010, Atrium Re executed assumption agreements for the Genworth and UGI reinsurance agreements. Accordingly, at all times PHH has had only one reinsurance affiliate.



Donald R. Gordon

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June 4, 2012

report, while at the same time providing all of the information to the CFPB. As we indicated during the call, we do not believe that the demands that information be provided for all requests back to 2001, and for many of the requests back to 1995, can be justified under the general assertion that the CFPB needs to understand the formation and operation of the various trusts. The statute of limitations for any purported RESPA action is three years. PHH entered into a tolling agreement with the CFPB on January 25, 2012; accordingly, the only relevant time period is January 25, 2009, forward. In spite of these objections, however, as explained more fully below, PHH is prepared to produce relevant documents that contain most, if not all of the historical information being sought. Our final general objection relates to the CFPB's inclusion of numerous questions regarding "private mortgage insurance." Once again, however, PHH is prepared to produce information necessary for the CFPB's investigation as long as there is sufficient cooperation on the part of the CFPB such that the information demanded can be produced in a reasonable timeframe and narrowed sufficiently to prevent the CID from becoming overly broad and unduly burdensome.

With respect to the specific Interrogatories, PHH proposes the following modifications and/or initial production limits:

### Interrogatories

Interrogatory No. 2: State the Company's correct legal name and principal place of business; the date and state of incorporation; all trade names under which the Company has done business; and the names, titles, and dates of employment of all officers, directors, and principal stockholders or owners.

PHH's Position: PHH believes that this interrogatory is overly broad and unduly burdensome and not likely to lead to the discovery of relevant information. In addition, information such as the "correct legal name, principal place of business; the date and state of incorporation; all trade names under which the Company has done business" as well as the names and titles of officers and directors is available from the Company's SEC filings, to which the CFPB has full and complete access. Further, PHH is a publicly-held corporation so the names of "principal stockholders" is also available to the CFPB from public sources.

As a compromise and in order to resolve its objections, PHH will provide the names of individuals at PHH with primary responsibility for managing and monitoring PHH's relationship with Atrium/Atrium Re for the period of time from January 1, 2006, forward. Further, PHH will provide documents, including materials filed with the State of New York (for Atrium) and Vermont (for Atrium Re), which will provide this information for the reinsurance entity for a substantially longer period of time. In the event the CFPB identifies a more specific period of time for which it is seeking information regarding officers, PHH will consider providing such information.

Interrogatory No. 3: List each state in which any Mortgage Lender has done business and the period during which such Mortgage Lender has done business in each state.

PHH's Position: PHH believes that this interrogatory is overly broad and unduly burdensome and not likely to lead to the discovery of relevant information. Since at least January 1, 2009, PHH Mortgage and PHH Home Loans, LLC, have been licensed in all 50 states. With respect to all of the loans for which Atrium/Atrium Re has provided reinsurance, PHH entities that originated the loans were properly licensed in the states in which the properties serving as collateral were located. If the CFPB identifies a more specific period of time for which it is seeking information regarding officers, PHH will provide such information.

Interrogatory No. 4: Describe the complete management structure of any component of the Company involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance, identifying all current and former management and supervisory employees, officers and directors (including contractors, if applicable), and any changes in the applicable time period. Information regarding mortgage insurance reinsurance shall be provided since Inception.

PHH's Position: PHH believes that this interrogatory is overly broad and unduly burdensome and not likely to lead to the discovery of relevant information. In addition, as noted previously, PHH believes that it is inappropriate to demand information relating to all aspects of "private mortgage insurance" as is done in this interrogatory. PHH will produce documents regarding the management

structure of Atrium and Atrium Re for the period of time since January 1, 2006, in lieu of a written response. To the extent available, PHH will produce documents that demonstrate the management structure of Atrium in 1995, i.e., the year of the first reinsurance agreement which was between Atrium and United Guaranty Insurance ("UGI"). The management structure of Atrium did not change significantly over time. If the CFPB provides specific limited dates outside of the periods identified above, PHH will provide additional information if the request is more narrowly tailored than the request for all information since 1995.

In addition, in response to this interrogatory, PHH will provide the names of the individuals at PHH most responsible for the monitoring of the relationship between PHH and Atrium, and Atrium and the pmi providers with whom it had a reinsurance arrangement for the period from January 1, 2006, forward, as well as the individuals with those responsibilities at the inception of the four reinsurance arrangements to the extent that information is available.

Interrogatory No. 5: Identify all current and former management and supervisory employees employed by the Company (including contractors, if applicable) with responsibilities relating to private mortgage insurance or mortgage insurance reinsurance since January 1, 1995. For each employee, state all current and former titles or positions and the dates each such current and former title or position was held.

PHH's Position: See PHH's Position re: Interrogatory No. 4. PHH believes that the documents and other information provided in response to Interrogatory No. 4 should be sufficient for the CFPB's investigation. If the CFPB believes that additional information is necessary, please identify with greater specificity that information and PHH will work with the CFPB to produce it.

Interrogatory No. 7: With respect to any instance identified in response to Interrogatory 6, describe every document preservation request or obligation directed to or imposed upon the Company, including the specific nature and extent of the documents sought to be preserved, the exact date that such request or obligation was transmitted to the Company, and the exact date when such request or obligation expired, or will expire.

PHH's Position: PHH believes that this interrogatory is irrelevant and not calculated to lead to the discovery of relevant information. The CFPB is not a party to any of the litigation identified in response to Interrogatory No. 6; accordingly, its demand for this information is simply an attempt to insert itself into those actions. If the CFPB can identify how this is possibly relevant to any legitimate inquiry on its part, PHH will reconsider its position on this Interrogatory.

Interrogatory No. 8: For each Captive Mortgage Reinsurance Arrangement to which the Company became a party after January 1, 1995:

- a. identify the Mortgage Insurance Provider with which the Company partnered in the Captive Mortgage Reinsurance Arrangement;
- b. state the date on which the Captive Mortgage Reinsurance Arrangement began;
- c. state the date on which the Captive Trust related to the Captive Mortgage Reinsurance Arrangement terminated, and if so, whether on a run-off or cut-off basis, and if it has not terminated, state "Active;"
- d. identify all agreements and amendments to agreements governing any aspect of the Captive Mortgage Reinsurance Arrangement or related Captive Trust, including, without limitation, reinsurance agreements, trust agreements, and agreements to end the Captive Mortgage Reinsurance Arrangement; and
- e. if the Captive Mortgage Reinsurance Arrangement has terminated, identify the provisions of any operative agreement that authorized or permitted the termination, and all documents relating to the termination.

Interrogatory No. 9: For each payment into any Captive Trust since Inception, state:

- a. the date of the payment;
- b. the amount of the payment;
- c. the payor;
- d. the original source of the payment, if not the payor;
- e. the classification of the payment (*e.g.*, ceded premiums, capital contributions, or interest income);
- f. the provision of the operative agreement permitting or requiring the payment; and

- g. the balance of the Captive Trust after the payment.

Provide your response in a separate Excel spreadsheet for each Captive Trust, listing each response as a separate row and each category (a through g) as a separate column.

Interrogatory No. 10: For each withdrawal or payment from any Captive Trust since Inception, state:

- a. the date of withdrawal or payment;
- b. the amount of withdrawal or payment;
- c. the payee;
- d. the classification of the withdrawal (e.g. payments on claims, expenses, taxes, or dividends);
- e. the provision of the operative agreement permitting or requiring the withdrawal; and
- f. the balance of the Captive Trust after payment.

Provide your response in a separate Excel spreadsheet for each Captive Trust, listing each response as a separate row and each category (a through f) as a separate column.

Interrogatory No. 11: For all Investment Income since Inception, state:

- a. the date of payment;
- b. the amount of payment;
- c. the payor;
- d. the payee (e.g. the Captive Trust or the Reinsurance Entity);
- e. the provision of the operative agreement permitting or requiring the payment.

Provide your response in a separate Excel spreadsheet for each Captive Trust with which the Investment Income is associated, regardless of whether the Investment Income was in such Captive Trust. List each response as a separate row and each category (a through e) as a separate column.

Interrogatory No. 12: For any amount in any Captive Trust that was Reclassified since Inception, state:

- a. the date of the reclassification;
- b. the amount reclassified;
- c. the original classification;
- d. the new classification; and
- e. the reason for the reclassification.

Provide your response in a separate Excel spreadsheet for each Captive Trust, listing each response as a separate row and each category (a through e) as a separate column.

PHH's Position: PHH is not aware of the term "reclassification" as it relates to the Captive Trusts and the CFPB's request for information. If the CFPB clarifies this term, PHH will endeavor to respond more fully.

Interrogatory No. 13: For any amount not in a Captive Trust that was transferred from any Reinsurance Entity since Inception, state:

- a. the date of the transfer;
- b. the amount transferred;
- c. the transferor (i.e., the Reinsurance Entity);
- d. the transferee (e.g., the specific entity within the Company);
- e. the classification of the transfer; and
- f. the reason for the transfer.

Provide your response in a separate Excel spreadsheet for each reinsurance entity, listing each response as a separate row and each category (a through f) as a separate column.

Interrogatory No. 14: For all monetary payments and all other transfers of any thing of value between any Reinsurance Entity and any Mortgage Insurance Provider since Inception not identified in response to Interrogatories 9 through 13, state:

- a. the date of the transfer;
- b. the amount or value of the transfer;
- c. the transferor;
- d. the transferee;

- e. the reason for the transfer; and
- f. the provision of the operative agreement, if any, permitting or requiring the transfer.

Provide your response in an Excel spreadsheet, listing each response as a separate row and each category (a through f) as a separate column.

Interrogatory No. 15: For each Captive Trust, state:

- a. the current balance (or if the trust has been closed, so state);
- b. the total value of all reinsurance claims paid since Inception;
- c. the total amount of capital contributions paid into the Captive Trust since Inception;
- d. the total of all ceded premiums paid into the Captive Trust since Inception; and
- e. the total amount projected to be paid from the Captive Trust on future reinsurance claims and the basis for the projection.

Interrogatory No. 16: For each Reinsurance Policy Year since Inception, state the following as of December 31<sup>st</sup> of each calendar year:

- a. the number of loans insured and reinsured;
- b. the outstanding principal of the loans identified in response to Subpart a. of this Interrogatory;
- c. the Mortgage Insurance Provider's risk in force;
- d. the Reinsurance Entity's Risk in Force; and
- e. the number of loans in default.

Provide your response in a separate Excel spreadsheet for each Captive Trust, listing each response as a separate row and each category (a through e) as a separate column.

PHH's Position Regarding Interrogatory Nos. 8-16: In addition to its specific concerns with Interrogatory No. 12, PHH believes that these eight Interrogatories are overly broad and unduly burdensome. In addition, PHH believes that the CFPB is already in possession of some or all of this information; accordingly, there is no basis to request the same information from PHH. Further, PHH believes that all of this information can be provided from readily available information, specifically, the year-end financial statements for Atrium/Atrium Re, the Milliman

metrics reports (one of which has already been provided to the CFPB), and the cession statements that are provided by the pmi companies. Accordingly, in order to resolve its objections to these Interrogatories, PHH will agree to produce copies of the reinsurance agreements that it had with UGI, Genworth, Radian Guaranty, Inc. ("Radian") and CMG Mortgage Insurance Company ("CMG"), and all amendments thereto by June 29, 2012. In addition, assuming we can reach an agreement regarding the breadth and scope of the CID, as well as a reasonable timetable for production of materials, PHH will produce all of the year-end financial statements that are readily available, as well as cession statements by June 29, 2012, the date listed in the CID. We believe that that information should cover the period of time from 2006 forward. Moreover, as noted above, we believe that these reports contain sufficient historical information to allow the CFPB to understand the operations of the reinsurance arrangements prior to that date. However, if, after review of these materials, the CFPB requires earlier reports, PHH will agree to attempt to retrieve such materials and produce such materials on a rolling basis. PHH also will produce by June 20, 2012, copies of the commutation agreements that have been executed with Radian, CMG and Genworth.

Interrogatory No. 17: Describe each type of loan made by the Company which was covered by a private mortgage insurance policy, but which was excluded from mortgage insurance reinsurance by the Company at any time. For each such type of loan, identify any operative agreement or amendment to an agreement authorizing such exclusion from reinsurance and the time period during which such exclusion was effective.

Interrogatory No. 18: Describe all systems or models used by the Company in underwriting or pricing mortgage insurance reinsurance.

PHH's Position: PHH believes that Interrogatory Nos. 17 and 18 are overly broad and unduly burdensome primarily because of the temporal scope of the requests. In order to resolve its concerns, PHH will agree to provide a response to these two interrogatories with documents that are readily available as well as written responses if the CFPB will extend the time for providing the responses an additional two weeks after PHH's initial production.



Interrogatory No. 21: If there are documents that would have been responsive to any of the requests for documents set forth below, which were destroyed, misplaced, transferred, deleted, altered, or over-written, identify the documents and explain why they cannot be produced.

PHH's Position: PHH believes that this Interrogatory is vague, unduly burdensome and not capable of being responded to in the absence of the complete identification of all records that are, in fact, responsive to the Requests for Documents. As stated above, PHH believes that the time period for the requested information, both Interrogatories and Requests for Documents, is unduly excessive; accordingly, until that issue is resolved for each specific demand, it would be impossible to respond to this inquiry. During our telephone call on Tuesday, May 29, 2012, the CFPB indicated that this particular request was designed to ascertain whether there was any significant loss of information or data due to some extraordinary event such as a fire or a wholesale loss of information due to a computer malfunction. PHH is not aware of any such event that would impact information relating to Atrium/Atrium Re and its reinsurance arrangements with the four pmi providers. However, to the extent documents were destroyed as a result of routine document destruction policies, or was removed to back-up tapes and drives, such information is either no longer available, or not readily available to PHH.

### Requests for Documents

Request No. 1: All documents relied upon to complete any of the Interrogatories set forth above.

PHH's Position: As explained above, PHH believes that several of the Interrogatories are excessive in scope as well as the time period for which materials and information is requested. In addition, several of the Interrogatories include general questions regarding pmi. PHH will produce the materials identified in response to the Interrogatories which it believes are sufficient to provide the requested information.

Request No. 2: Organization charts of the Company sufficient to show each entity involved in Captive Mortgage Reinsurance Arrangements, and describe each such entity's role in such practices. To the extent that the identity of such entity or its

direct or indirect ownership has changed during the applicable time period, submit organization charts sufficient to reflect and explain such change. If such documents were completely and accurately provided in response to the Bureau's letter dated January 3, 2012, certify their completeness and accuracy.

PHH's Position: PHH will provide documents relating to the organizational structure of Atrium/Atrium Re and PHH Corporation for the period from January 1, 2006, to the present. PHH believes that the request for documents "describ[ing] each such entity's role in such practices," is overly broad. The "role" of Atrium/Atrium Re in providing reinsurance is set forth in the four specific agreements and various amendments thereto. PHH will produce by June 20, 2012, those documents, as well as the commutation agreements for three of the four reinsurance arrangements, which will be sufficient to identify the role of Atrium/Atrium Re with regard to its reinsurance arrangements with the four pmi providers.

Request No. 3: Organization charts showing the complete management structure of any component of the Company involved in offering, providing, operating or monitoring private mortgage insurance or mortgage insurance reinsurance, identifying all current and former management and supervisory employees, officers, directors, or contractors, and any changes during the applicable time period.

PHH's Position: PHH does not now, nor has it ever, offered, provided, or "operat[ed]" private mortgage insurance. PHH is not sure what is meant by the request for charts showing the management structure of an entity that "monitor[s]" private mortgage insurance. The requirement for pmi is one imposed by the investor. Since 2001, the majority of loans originated by PHH affiliates were sold to FNMA or FHLMC; accordingly, the requirement for pmi comes from those entities. PHH will agree to produce documents sufficient to demonstrate the management structure of Atrium/Atrium Re during the period from January 1, 2006, to the present. In addition, the New York Department of Insurance performed two audits of Atrium, one in 2001 and a second in 2007. Those documents are publicly available on the website of the New York Department of Financial Services. Those audits contain information regarding the management structure of Atrium for those two specific time periods. If the CFPB is interested in

other limited specific time periods, PHH will respond if the information is readily available.

Request No. 4: All documents and answers to interrogatories produced by the Company to plaintiffs, together with transcripts of all depositions taken by any party, in *Munoz v. PHH Corp.*, Civ. Case No. 08-0759 (E.D. Cal.).

PHH's Position: The plaintiffs in the Munoz litigation did not serve any interrogatories on PHH, and only one deposition has been taken in the case. PHH believes that this request seeks irrelevant information that is also beyond the scope of the relevant time period for the CFPB's investigation. As previously stated, the statute of limitations period for any alleged RESPA violation is three years; accordingly, for purposes of the CFPB's investigation, the applicable time period is from January 25, 2009, to the present. Without waiving its objections, PHH will produce a copy of the deposition transcript of Mark Danahy, former President and CEO of PHH Mortgage Corporation, whose deposition was taken on October 22, 2009, along with a declaration executed by Mr. Danahy in connection with the *Munoz* case. In addition, PHH will provide the CFPB with a list of the documents produced in discovery, and it will agree to produce materials from that list in the same format in which those materials were produced to plaintiffs in the underlying action.

Request No. 5: All documents reflecting or embodying communications relating to actual or potential Captive Mortgage Reinsurance Arrangements, between the Company and any of the following:

- a. any Mortgage Insurance Provider;
- b. any third party identified in response to Interrogatory No. 19; and
- c. any federal, state, or local government agency or regulator.

PHH's Position: PHH believes that this Request is overly broad, unduly burdensome, and not calculated to lead to the production of information relevant to Atrium's/Atrium Re's reinsurance arrangements. As an initial matter, PHH does not understand the request to the extent it seeks information regarding "potential" Captive Mortgage Reinsurance Arrangements. Since at least January 1, 2006, PHH is not aware of any discussions with any entity regarding a "potential" new pmi reinsurance arrangement. Second, PHH affiliates originate tens of thousands of loans every year, a large number of which require pmi as a condition

of origination, which is a condition placed on originators by the investors, typically FNMA and FHLMC. There are likely extensive communications with the pmi providers relating to individual loans, some of which may mention or touch upon the fact that the particular loan is part of a reinsurance book of business between Atrium/Atrium Re and the pmi provider. Without reviewing all of those documents, it would be impossible to respond to this request for "all documents." PHH requests that the CFPB narrow the scope of this particular request or, in the alternative, agree to hold it in abeyance until it reviews the other materials and documents that PHH is producing.

Request No. 6: All reports, summaries, or presentations, or drafts of the same, relating to Captive Mortgage Reinsurance Arrangements, since the Inception of any Reinsurance Entity to which the document(s) relate(s).

PHH's Position: PHH believes that the demand for "[a]ll reports, summaries, or presentations, or drafts of the same" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. PHH has already provided the CFPB with a sample of a Milliman metrics report, which contains historical information regarding the reinsurance arrangements. In addition, PHH has agreed to produce cession statements from the pmi providers, as well as Atrium/Atrium Re year end financials that are readily available. PHH requests that the CFPB narrow the scope of this particular Request or, in the alternative, agree to hold it in abeyance until it reviews the other materials and documents that PHH is producing.

Request No. 7: All documents since the Inception of each Reinsurance Entity relating to the creation, promotion, or marketing of actual or potential Captive Mortgage Reinsurance Arrangements, including but not limited to presentations, requests for proposals, negotiations and responses.

PHH's Position: PHH is not aware of any documents responsive to this request that were created during the period of time from January 1, 2006, to the present. Further, PHH is not aware of any documents it would have created regarding the promoting or marketing of Captive Mortgage Reinsurance Arrangements. PHH is not aware of any discussion with any entity regarding a "potential" new pmi reinsurance arrangement with PHH. With respect to documents within the possession, custody or control of PHH that were created prior to January 1, 2006,

that relate to one of the four reinsurance arrangements entered into by Atrium and are readily available, PHH will produce those materials; however, it will require an additional period of at least 30 days to conduct a search for such materials.

Request No. 8: All documents since the Inception of each Reinsurance Entity relating to the legality, profitability, costs, risks, finances, conditions, or structure of Captive Mortgage Reinsurance Arrangements.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. PHH has already provided the CFPB with a sample of a Milliman metrics report, which contains historical information regarding the reinsurance arrangements. In addition, PHH has agreed to produce cession statements from the pmi providers, as well as Atrium/Atrium Re year end financials that are readily available. PHH will also produce all of the risk transfer opinions prepared by Milliman for Atrium. Further, to the extent this request seeks documents filed in the *Munoz* and *Hamm* litigation, the CFPB can access that information through the PACER system. PHH will not agree to produce documents protected by the attorney-client privilege and/or the attorney work product doctrine in response to this Request. PHH requests that the CFPB narrow the scope of this particular Request or, in the alternative, agree to hold it in abeyance until it reviews the other materials and documents that PHH is producing.

Request No. 9: All documents since the Inception of each Reinsurance Entity relating to the purpose of Captive Mortgage Reinsurance Arrangements, including, but not limited to, decisions to seek, maintain, develop, or cancel Captive Mortgage Reinsurance Arrangements.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. PHH requests that the CFPB narrow the scope of this particular Request or, in the alternative, agree to hold it in abeyance until it reviews the other materials and documents that PHH is producing.

Request No. 10: All documents relating to any proposed, contemplated, or actual contract or agreement or any modifications of such agreements between you and any Mortgage Insurance Provider. This request includes, but is not limited to, any

notes or records of any oral, written, or implied contract or agreement for the purchase of mortgage insurance or reinsurance, trust agreement, commutation agreement, retrocession agreement, indemnification agreement, security agreement, participation agreement, and any related amendment.

PHH's Position: See PHH's Position re: Request No. 9.

Request No. 11: All documents relating to the financial statements of each of the Company's Reinsurance Entities, including, but not limited to, balance sheets, income and expense statements, cash flow statements, management discussion and analysis and notes to financial statements, as well as general ledgers and all underlying work papers prepared in-house or by any third party.

PHH's Position: PHH believes that this Request is overly broad, unduly burdensome, and not calculated to lead to the production of relevant information. Further, the demand for work papers prepared by the accountants who prepared the financial statements for Atrium/Atrium Re is unnecessarily broad and unduly burdensome. As PHH has stated above, it will produce the year-end audited financial statements for Atrium/Atrium Re that are readily available, which should cover the period from 2006 forward. If, after reviewing this information, the CFPB requires additional information relating to the financial statements, PHH will attempt to provide such information if it will not be unduly burdensome and not involve privileged information. If PHH intends to assert a privilege objection with respect to any of the Requests, it will prepare the appropriate privilege log.

Request No. 12: All documents relating to any accounting of any Captive Mortgage Reinsurance Arrangement or Captive Trust, including but not limited to any settlement report, summary report, captive report, valuation notice, trust account summary, cession statement, accounting statement, capital deposit or capital deficiency notice, or trust disbursement request.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. PHH has already provided the CFPB with a sample of a Milliman Metrics Report for the 4th Quarter of 2009. In connection with other requests, PHH will agree to produce cession statements that are readily available. Both of these documents contain historical information. PHH believes that these reports contain sufficient information necessary to respond to Request No. 12.

PHH will agree to produce additional quarterly reports for the 4th quarter for all years that are readily available; however, PHH requests an additional two weeks after its initial production in which to produce such information. PHH will further agree to search its archives and stored documents for additional reports if the CFPB, after reviewing the materials already produced, asserts that such information is required. However, as noted previously, in 2008, HUD issued a subpoena directly to Milliman for this information; accordingly, PHH believes that the CFPB, which "inherited" this investigation from HUD is already in possession of the Milliman reports for the years prior to 2009.

Request No. 13: All documents relating to projections of costs, losses, assets, liabilities, income or profits pertaining to the provision of mortgage insurance reinsurance, including but not limited to business plans, pro forma projections, and documents embodying performance objectives, goals, or expectations for any of the Company's reinsurance entities.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. PHH has already provided the CFPB with a sample of a Milliman Metrics Report for the 4th Quarter of 2009. PHH believes that those reports contain sufficient information necessary to respond to Request No. 13. As noted previously, PHH will agree to produce additional quarterly reports that are readily available.

Request No. 14: All documents that relate to, measure, or analyze the finances of any of the Company's reinsurance entities, including but not limited to any revenue statement, performance measurement, quality review, compliance review, or milestone.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. PHH will agree to produce Milliman metric reports, cession statements and Atrium/Atrium Re financial statements. PHH believes that those reports contain sufficient information necessary to respond to Request No. 14.

Request No. 15: All invoices, bills, receipts, and records of payments relating to any transaction into or from any Captive Trust, including but not limited to capital

contributions, ceded premiums, Investment Income, payment of reinsurance claims, dividends, income taxes, and expenses.

PHH's Position: PHH believes that the demand for "[a]ll" documents relating to any transaction into or from the trusts for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. PHH will agree to produce the cession statements and financial statements that are readily available, which should cover the period from 2006 forward. Further, these reports contain historical information; accordingly PHH believes that those reports contain sufficient information necessary to respond to Request No. 15.

Request No. 16: All invoices, bills, receipts, and records of payments relating to any transaction into or from any of the Company's Reinsurance Entities.

PHH's Position: See PHH's Position re: Request No. 15.

Request No. 17: All documents relating to the selection of Mortgage Insurance Providers or allocation of business among Mortgage Insurance Providers by the Company, or to any contemplated or actual increase, decrease or elimination of business with a particular Mortgage Insurance Provider, including but not limited to any scorecards, spreadsheets, formulas, or other system of selection and any documents embodying negotiations, deliberations, or discussions thereof.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. In order to resolve its concerns with this Request, PHH will agree to produce the deposition transcript of Mark Danahy that was taken in connection with the *Munoz* litigation which contains an explanation of the allocation of business among various pmi providers, including those with which Atrium did not have a reinsurance agreement. In addition, PHH will agree to produce the documents produced in the *Munoz* litigation that relate to the criteria used to establish the dialer system that allocated loans to various pmi providers that offered pmi for the specific type of loan at issue. PHH believes that these documents contain sufficient information necessary to respond to Request No. 17.

Request No. 18: All documents relating to the policies and procedures for communicating to consumers the selection of a Mortgage Insurance Provider.



PHH's Position: PHH believes that this Request is overly broad and unduly burdensome to the extent it seeks documents not tied in any respect to the issue of pmi reinsurance. In an effort to resolve its concerns, PHH will agree to produce exemplars of the affiliated business disclosures that were provided to consumers at various times since at least 2006 which disclose the possibility that Atrium may provide pmi reinsurance in connection with the customer's loan and that the customer is free to shop around and use a different pmi provider. If the CFPB identifies a legitimate basis for this Request and limits the temporal scope of this Request, PHH will attempt to accommodate the CFPB's additional requests.

Request No. 19: All templates or scripts of any written or oral disclosures provided by the Company to consumers regarding mortgage insurance, including, but not limited to the reasons for requiring mortgage insurance, the amount of mortgage insurance coverage purchased, and the selection of a particular Mortgage Insurance Provider.

PHH's Position: See PHH's Position re: Request No. 18.

Request No. 20: All templates or scripts of any disclosure provided by the Company to consumers regarding the Company's interest in any reinsurance entity.

PHH's Position: See PHH's Position re: Request No. 18.

Request No. 21: All documents relating to the 1997 HUD Retsinas Letter.

PHH's Position: PHH believes that this Request is overly broad and unduly burdensome both in breadth and temporal scope. In addition, PHH believes that the CFPB already has this information because HUD previously subpoenaed this information from Milliman, the entity that provided Atrium with a number of risk transfer opinions. In an effort to resolve its concerns, PHH will agree to produce the risk transfer opinions it obtained from Milliman.

Request No. 22: All actuarial studies, reports, opinions, memoranda, internal reviews, or statements, and all related documents and underlying work papers, concerning risk transfer in Captive Mortgage Reinsurance Arrangements, including but not limited to risk transfer requirements under the Financial Accounting Standards Board (FASB), Statutory Accounting Principles (SAP),

Emerging Issues Task Force (EITF), Generally Accepted Accounting Principles (GAAP), or National Association of Insurance Commissioners (NAIC).

PHH's Position: See PHH's Position re: Request No. 21.

Request No. 23: All documents provided to or received from any actuary, financial analyst, auditor, outside consultant or any other person outside the Company, relating to the preparation of any document, including any draft, outline, or other preliminary document, produced in response to Document Requests No. 21 or 22 of this CID.

PHH's Position: See PHH's Position re: Request No. 21.

Request No. 25: All documents relating to any financial, business, or investment assessment or analysis of any aspect of any Captive Mortgage Reinsurance Arrangement, including but not limited to, rating agency reports or other analyst reports.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. Further, there are numerous SEC filings by PHH which refer to Atrium/Atrium Re, all of which are publicly available to the CFPB. In order to resolve its concerns with this Request, PHH will agree to produce the previously identified risk transfer opinions it obtained from Milliman, as well as the previously identified Milliman metric reports, all of which contain information responsive to this Request.

Request No. 26: All reports or financial statements relating to mortgage insurance reinsurance filed with any state regulatory agency identified in response to Interrogatory 20 since the Inception of the relevant Reinsurance Entity, including but not limited to, Vermont Captive Insurance Annual Reports and Audited Statutory Financial Statements.

PHH's Position: PHH will agree to produce copies of all reports and financial statements filed with the New York and Vermont regulators that are readily available as long as the CFPB will agree to allow PHH an additional period of 30 days in which to complete its production in response to this request. If after reviewing this information the CFPB believes that additional materials are

necessary, PHH will agree to search its archives and stored files for additional historical information.

Request No. 29: All documents relating to the underwriting or pricing of mortgage insurance reinsurance.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. In general, the charge by Atrium/Atrium Re for reinsurance is set forth in the various agreements between Atrium/Atrium Re and the pmi providers. Therefore, PHH will agree to produce those agreements and believes they will be sufficient to respond to this Request.

Request No. 30: All documents prepared by or provided to the Company's Board of Directors or any committee of the Board of Directors relating to the Company's Reinsurance Entity or Captive Mortgage Reinsurance Arrangements, including but not limited to all reports, summaries, presentations, emails, meeting minutes, or meetings agendas.

PHH's Position: PHH believes that the demand for "[a]ll documents" for the entire period in which the reinsurance agreements were in place is overly broad and unduly burdensome. PHH will agree to produce information that is readily available if the CFPB agrees to give PHH an additional period of 45 days in which to locate and review this information prior to production.

Request No. 33: Documents sufficient to describe the Company's document retention and destruction policies, including, but not limited to, any documents changing, altering, or suspending those policies and procedures.

PHH's Position: PHH does not believe that this request is relevant to the CFPB's investigation. PHH believes that all relevant documents and information has been retained.

Electronic Mail Searches: PHH will agree to search the emails of the following individuals who were most involved in the reinsurance arrangements entered into by Atrium:

- Mark Danahy (former employee and former President and CEO of PHH Mortgage and former Controller for PHH Mortgage and former Chief Financial Officer for Cendant Corporation);
- Richard J. Bradfield, (current employee), Senior Vice President, Capital Markets & Treasurer;
- Sam Rosenthal (current employee), Vice President, Risk Management, Secondary Marketing, PHH Corporation;
- Michael Bogansky (current employee); Vice President, Accounting, PHH Corporation;
- Kelly Redfearn (current employee), Manager.

PHH requests that the CFPB provide search terms. Once there is an agreement on the search terms, PHH will be able to provide an estimate of the time necessary to conduct a search of the email data bases and, following the identification of the number of responsive emails, an estimate of the time to complete the production of the identified emails.

Additional Considerations: Under the terms of the CID, PHH must file any petition to quash or limit the CID on or before June 12, 2012. Further, under the terms of the CID, responses are due June 20, 2012. If we can reach an agreement along the lines discussed above, PHH will require a short extension of time, until Friday, June 29, 2012, in which to make its initial production of materials and initial responses to the Interrogatories. For a few of the requests, PHH will require an additional two weeks, or until July 16th, to locate and provide the requested materials. PHH will provide the materials in the same format in which they were received. Thus, for example, the cession statements will be produced in Excel format. The Milliman metrics reports will be provided either as electronic pdf files or in hard copy, depending on what form is readily available.

As explained above, PHH is prepared to provide the CFPB with a significant amount of information related to its reinsurance agreements by July 16, 2012. If, after review of those materials, the CFPB has additional requests, PHH will agree to search for and produce additional materials to the extent such demands are not overly broad, unduly burdensome, and do not request privileged material or information. This production schedule does not include a search of emails since that issue will require additional agreements between us regarding the search terms and the breadth of the search. In exchange for its cooperation in this regard, PHH asks that the CFPB agree to toll the

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**SIDMAN**  
**KIDER PC**

Donald R. Gordon

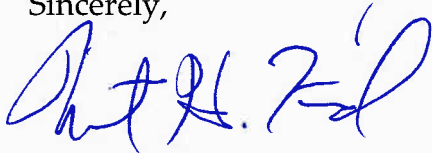
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June 4, 2012

period for filing a petition to quash or limit the CID, just as PHH previously agreed to toll the statute of limitations. The tolling agreement must also include the ability of PHH to assert privilege objections. If the CFPB will not agree to toll these deadlines in order to allow for the production of these materials, then PHH will be forced to seek appropriate relief.

Please feel free to contact me if you have any questions regarding this information.

Sincerely,



Mitchel H. Kider

cc: Kimberly J. Revener

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CONFIDENTIAL COMMUNICATION

# **ATTACHMENT B**



1700 G Street NW, Washington, DC 20552

June 7, 2012

**Via Electronic Mail & Hand Delivery**

David Souders, Esq.  
Mitchell Kider, Esq.  
Weiner Brodsky Sidman Kider P.C.  
1300 19th Street NW 5th Floor  
Washington, DC 20036-1609

Re: Civil Investigative Demand to PHH Corporation

Dear Counsel:

I have received your request on behalf of your client, PHH Corporation ("PHH"), for a limited extension of the deadline to produce certain documents responsive to the Civil Investigative Demand (CID) which PHH received on May 22, 2012. I appreciate that PHH and Enforcement staff continue to work to develop a complete production schedule and resolve any remaining issues with respect to particular burdens that may be imposed by the CID.

Accordingly, pursuant to 12 C.F.R. part 1080.6(c), I am granting PHH an extension of time to produce documents on the following schedule:

- Initial production due June 29, 2012, including all documents identified as available by that date in PHH's letter to Donald Gordon dated June 4, 2012.
- All remaining documents due July 16, 2012.

In addition, this letter outlines the following terms – all of which PHH has previously discussed with Enforcement staff – for satisfactory compliance by PHH with the CID.

1. Document Submission Standards

CFPB agrees to accept documents previously produced in *Munoz v. PHH Corp.*, Civ. Case No. 08-0759 (E.D. Cal.) in their existing formats, including paper and PDF, numbering 15,729 pages. The paper portion of

Letter to David Souders, Esq.

June 7, 2012

the submission must comply with the Document Submission Standards for hard copy productions.

2. Publicly Available Documents

To the extent publicly available documents are responsive to any of the requests, PHH may identify such documents with sufficient detail as may be necessary to locate the responsive material in lieu of producing the documents in their entirety. If the publicly available documents are voluminous (such as SEC filings), PHH must identify precisely which filings are responsive by date, form, and location.

3. Interrogatory 3

In response to Interrogatory 3, CFPB will accept PHH's certification that PHH Mortgage and PHH Home Loans have been licensed in all 50 states since at least January 1, 2009. The interrogatory will be further modified to accept a similar certification of the states in which Atrium Reinsurance Corporation and its predecessor, Atrium Insurance Corporation, have transacted business since January 1, 2009 in lieu of the original request.

4. Interrogatories 9-15 & Document Requests 11-14

CFPB agrees to accept financial statements, cession statements, general ledgers, and other existing documents in response to Interrogatories #9-15, in coordination with Document Requests #11-14. Where recent summaries are available that reflect and include all of the requested historical data, PHH may satisfy the request by providing such summaries. The foregoing modifications are subject to the CFPB's confirmation that the documents provided do in fact contain the complete information requested, and that PHH will assist in any supplemental explanation that may be necessary to understand the documents.

5. Document Requests 15-16

These requests will be held in abeyance based upon PHH's representations that the information sought here is recorded in other summary documents, such as cession and financial statements, which will be produced. CFPB



Letter to David Souders, Esq.

June 7, 2012

reserves the right to confirm that these summary documents in fact reflect the information requested, and to seek additional information as needed.

Lastly, PHH has requested that CFPB toll the deadline for filing a petition to modify or set aside the CID for an indefinite period pending PHH's production. For the reasons set forth in the accompanying letter from Don Gordon, an extension of time to petition to modify or set aside the CID is not warranted in this case. PHH's application for such an extension is denied.

Sincerely,



Kent Markus  
Chief of Enforcement

# **ATTACHMENT C**



1500 Pennsylvania Ave, NW [Attn: 1801 L St]  
Washington, DC 20220

June 8, 2012

**Via Electronic Mail & Hand Delivery**

David Souders, Esq.  
Mitchell Kider, Esq.  
Weiner Brodsky Sidman Kider P.C.  
1300 19th Street NW 5th Floor  
Washington, DC 20036-1609

Re: Civil Investigative Demand to PHH Corporation

Dear Counsel:

We have reviewed your letter dated June 4, 2012, setting forth various objections and requested modifications to the Bureau's May 22 CID. We remain committed to working with you to resolve any particular, significant burdens imposed by the CID. As a result, we have recommended and obtained several modifications to the CID to accommodate certain requests set forth in your letter. These modifications are specified in the enclosed letter from our Chief of Enforcement, Kent Markus.

We are also willing to work with the list of custodians that you provided as a starting point to narrow the scope of electronic mail searches. In order to do so, we will need some additional information, including:

- (1) A complete list of all current and former employees of Atrium, Atrium Re, and any other division of PHH involved in mortgage reinsurance, the selection of private mortgage insurance providers, or oversight of those functions, in addition to those identified in your letter;
- (2) A description of those employees' general job functions with respect to mortgage reinsurance or the selection of private mortgage insurance providers; and
- (3) A description of what data currently exists within that employee's custody, including its volume, format, and the date range covered by the data.

Once we receive this information, we can select the relevant custodians and assist you to move this process forward.

Letter to David Souders, Esq.

June 8, 2012

Page 2 of 4

We believe that with respect to the collection of electronic data and other matters, we can continue to work with you to bridge our differences and reach mutually agreeable resolutions. However, to the extent that your letter raises general rote objections that certain requests are “overly broad and unduly burdensome,” “inappropriate,” or “irrelevant,” these objections are unsupported and do not reflect the applicable legal standard. As you are no doubt aware, the Bureau has extensive authority to request information, data, and documents from your client, particularly with respect to the enforcement of RESPA. *See* Dodd-Frank Wall Street Reform & Consumer Financial Protection Act (“CFPA”), 12 U.S.C. §§ 5511 (general authority of the Bureau), 5514 (supervision of non-depository covered persons), 5562 (investigations and administrative discovery), 5481(12)(M) (defining RESPA as an “enumerated consumer law”). An administrative subpoena “is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information is reasonably relevant.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). While this CID is narrowly tailored to a particular practice and potential violation of law, an independent agency such as the Bureau has broad investigative discretion. The Bureau has “no obligation to establish precisely the relevance of the material it seeks” or to reveal the internal deliberations of our investigation. *F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992). With respect to an administrative CID, “it is essentially the *respondent’s* burden to show that the information is irrelevant.” *Id.* (emphasis added). We do not believe that any of your objections meet this threshold.

In addition, you have not offered any legally cognizable basis to challenge the relevance of the requests set forth in the CID. For example, the law is clear that a possible statute of limitations defense does not limit an agency’s authority to investigate and cannot be used as a defense to a demand for documents. *See, e.g., EEOC v. American Express Centurion Bank*, 758 F.Supp. 217, 222 (D.Del. 1991). To the extent older information is unavailable or not reasonably accessible, we will consider those issues as a matter of burden, not relevance. With respect to PHH’s Position Regarding Request Nos. 6, 8, 9, 10, 11, 12, 13, 14, 17, 21, 22, 23, 25, & 29, we decline to narrow the CID as you suggest. PHH is not entitled to selectively cherry-pick the documents it will provide in response to any given request. It is also unacceptable for PHH to condition any production of readily available, responsive documents upon obtaining certain concessions from the Bureau. (*See, e.g.,* PHH’s Position Regarding Interrogatory Nos. 8-16.) PHH must search for and produce all documents responsive to each request that lie within

Letter to David Souders, Esq.

June 8, 2012

Page 3 of 4

its possession, custody, and control, subject to any demonstrable claims of undue burden.<sup>1</sup>

We have repeatedly explained that claims of undue burden must be substantiated, but you have offered no factual basis to demonstrate any specific impediment or challenges for your client to obtain the requested materials. In fact, so far as we are aware you remain unable to cite specific issues relating to potential burden because you have not taken steps to consult your client's information technology personnel or advisers regarding fundamental questions of data availability, accessibility, and volumes. Nor have you disclosed to us any expected timetable for obtaining this information, as we proposed. In the absence of such facts, we cannot agree to further modify the CID. In general, it is also insufficient for PHH to assert that it is "unaware" of responsive documents when the company has yet to even undertake a search. To the extent you have additional information that may illuminate these issues, please notify us and we will give any such information prompt and careful consideration. And we request, yet again, that to facilitate the efficient disposition of these issues you make your client's information technology personnel available to confer with us as soon as possible.

Lastly, we welcome the opportunity to clarify any confusion regarding the intended scope of the requests. For example, in response to Interrogatory No. 12, you seek clarification regarding the meaning of "reclassification." "Reclassified" is a defined term within the CID, and we direct you to Definition (I)(S) provided on page 3. Similarly, we can clarify that the CID does not seek documents pertaining to the loan files of individual customers. (*See, e.g.*, PHH's Position Regarding Request No. 5.) We are available to address any further questions arising from these issues or any other aspect of the CID.

Pursuant to the granted extension of time attached hereto, we look forward to your production of the various materials pledged on June 29<sup>th</sup> and July 16<sup>th</sup>. We also respectfully request that you produce all discovery from the *Munoz* litigation promptly, rather than in the piecemeal fashion you have proposed. As we indicated in our May 29 call, we are willing to accept the *Munoz* production in the form in which you indicated it is kept, namely some

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<sup>1</sup> With respect to the Milliman Captive Reinsurance Metrics sample binder provided by PHH to the Bureau, we can confirm that these materials, beyond the sample binder, are not already in the Bureau's possession. Furthermore, we do not believe that PHH can avoid its obligation to produce readily available, responsive materials by invoking a mere assumption that some third party, such as Milliman, has made an independent production.

Letter to David Souders, Esq.

June 8, 2012

Page 4 of 4

15,729 pages in hard copy and PDF form, without further conforming to our Document Submission Standards. The re-production of these materials to the Bureau in this form imposes no significant burden on PHH, and there is no basis to withhold materials from the agency which have already been produced to private plaintiffs. Relatedly, as your responses did not address any objections to Document Request No. 24, we trust that responsive documents will be provided forthwith.

We are available to confer further once you have had an opportunity to consider the Bureau's position. Further accommodations and modifications may be available to the extent that demonstrable burdens imposed by the CID can be identified to the Bureau. We hope to continue to work with you to resolve any remaining issues in a cooperative manner.

Sincerely,



Donald R. Gordon

Encl.

# **ATTACHMENT D**



June 8, 2012

**BY EMAIL DELIVERY**

**CONFIDENTIAL COMMUNICATION**

Donald R. Gordon  
Enforcement Attorney  
Consumer Financial Protection Bureau  
1750 Penn. Ave. N.W., 10th Floor  
Washington, DC 20220

Re: Civil Investigative Demand to PHH Corporation

Dear Mr. Gordon:

We received your letter today, as well as the letter from Kent Markus dated June 7, 2012, regarding the Consumer Financial Protection Bureau's ("CFPB") response to our correspondence dated June 4, 2012 concerning the Civil Investigative Demand ("CID") served on our client, PHH Corporation ("PHH"). Mitch Kider and Dave Souders are traveling on business today and have only had a brief opportunity to review both letters. They asked me to send you this time-sensitive, follow-up correspondence on their behalf.

In his letter, Mr. Markus granted PHH's request for an extension of time to produce documents, but denied PHH's request to toll the deadline to file a petition to modify or set aside the CID. As you know, PHH's deadline for filing such a petition is Tuesday, June 12, 2012. Thus, while PHH remains committed to working with the CFPB to resolve our differences regarding the CID, it respectfully requests a brief extension of time, until June 29, 2012, i.e., the same date set for the initial production of documents, to file a petition to modify or set aside the CID.



**WEINER**  
**BRODSKY**  
**SIDMAN**  
**KIDER PC**

Donald R. Gordon

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June 8, 2012

We appreciate your immediate attention to this request. Kindly contact me if you have any questions.

Sincerely,



Sandra B. Vipond

cc: Kimberly J. Ravener

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CONFIDENTIAL COMMUNICATION

**ATTACHMENT E**



1700 G Street NW, Washington, DC 20552

June 11, 2012

**Via Electronic Mail**

David Souders, Esq.  
Mitchell Kider, Esq.  
Weiner Brodsky Sidman Kider P.C.  
1300 19th Street NW 5th Floor  
Washington, DC 20036-1609

Re: Civil Investigative Demand to PHH Corporation

Dear Counsel:

I have received Sandra Vipond's letter on behalf of PHH Corp. of June 8, 2012, requesting an extension of time to file a petition to modify or set aside our CID. As that letter notes, my letter of June 8, while granting a number of modifications to the CID, denied your previous request for an extension in the form of an indefinite tolling of the deadline.

As you know, extensions of time to file such a petition are disfavored. *See* 12 CFR § 1080.6(d)(2); CID, Instruction II.G. You have stated no particular or additional grounds for such an extension. Accordingly, PHH's renewed request for an extension is denied.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kent Markus", is written over the typed name.

Kent Markus  
Chief of Enforcement