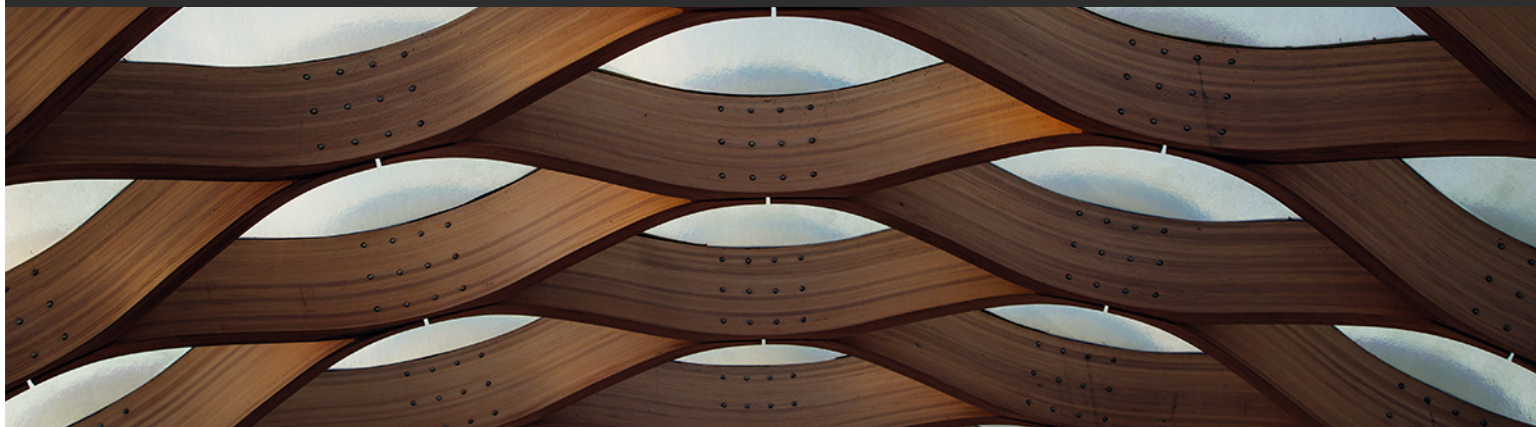


**Alert | Financial Regulatory & Compliance/Financial Services Litigation**



June 2018

## **CFPB Dismisses Case Against PHH, Ending Long-Running Battle but Leaving Important RESPA Ruling Intact**

On June 7, 2018, the Consumer Financial Protection Bureau dismissed the case against PHH Corp., indicating that “PHH did not violate RESPA if it charged no more than reasonable market value for the reinsurance it required the mortgage insurers to purchase, even if the reinsurance was a quid pro quo for referrals.”<sup>1</sup>

The dismissal of the action follows years of litigation and appeals, through two different administrations, and closes the book on this particular case, even while the Constitutional questions regarding the structure of the CFPB continue to be raised in other courts and proceedings. However, the D.C. Circuit’s important holding on the proper interpretation of RESPA Section 8(c)(2) and the applicable statute of limitation is now unlikely to be challenged for some time, and remains significant precedent.

As we have covered previously,<sup>2</sup> the D.C. Circuit’s ruling strongly rejected the CFPB’s interpretation of RESPA, specifically their contention that any payment tied – in any way – to the referral of business could not be “bonafide” and thereby subject to the safe harbor of RESPA Section 8(c)(2), which provides that RESPA does not forbid compensation for “services actually performed.” PHH took the position that

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<sup>1</sup> PHH Corp., CFPB No. 2014-CFPB-0002 (June 7, 2018), available [here](#).

<sup>2</sup> <https://www.gtlaw.com/en/insights/2018/2/dc-circuit-court-of-appeals-rules-that-cfpb-structure-is-constitutional>

because its insurance affiliate provided actual reinsurance under the relevant agreements, these were “services actually performed” and therefore could not subject them to RESPA liability. The CFPB’s previous position was that section 8(c)(2) was not a safe harbor, and that any time a party receives a “thing of value” in connection with a referral of business, it violates RESPA Section 8.<sup>3</sup>

The D.C. Circuit’s ruling rejected the Bureau’s interpretation, and held that – as the industry had long assumed – Section 8(c) provided a safe harbor, an exception to liability under RESPA Section 8 for services provided at market value, even where it was in connection with a referral of business. As this view is apparently consistent with the CFPB’s views under current leadership, any new interpretation by a future administration would likely have to take the form of new rule-making or official guidance before any enforcement action would be accepted by the courts.

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<sup>3</sup> PHH Corp., CFPB No. 2014-CFPB-0002 (June 7, 2018) at p. 16, available [here](#).