



1700 G Street NW, Washington, DC 20552

June 27, 2016

VIA ECF

Mark Langer, Clerk of the Court  
United States Court of Appeals  
for the District of Columbia Circuit  
333 Constitution Ave., N.W., Room 5205  
Washington, D.C. 20001

Re: *PHH Corp. v. CFPB*, No. 15-1177 (Oral argument held  
April 12, 2016) – CFPB’s response to Petitioner’s Fed.  
R. App. P. 28(j) letter

Dear Mr. Langer:

This letter responds to the Fed. R. App. P. 28(j) letter submitted on June 23, 2016, by Petitioner PHH Corp. PHH brings to this Court’s attention the decision in *Encino Motorcars, LLC v. Navarro*, No. 15-415 (U.S. June 20, 2016).

In *Encino Motors*, the Court held that an agency’s rule, issued in 2011, was not entitled to *Chevron* deference because it was “procedurally defective.” Opin. at 8. The final rule departed from the interpretative position set forth in the proposed rule, which had also been the agency’s position since at least 1987. *Id.* at 5. The Court observed that the agency was entitled to change its position, but held that the 2011 rule was not entitled to deference because the agency had provided “barely any explanation” for the change. The Court noted that a “reasoned explanation” was particularly required because industry had relied on the previous position for many years. Opin. at 10. PHH contends that *Encino Motors* supports its reliance on what it refers to as a “relatively informal (but nonetheless official)” HUD opinion letter, and that the Director’s Decision did not adequately address “PHH’s reliance interests” on that letter.

PHH is wrong on both counts. As explained by the Director's Decision, Dec. at 17 (JA.17), and in the CFPB's brief, CFPB Br. at 30-31, the "relatively informal (but nonetheless official)" letter on which PHH relied was nothing more than an *unofficial* staff interpretation of RESPA. HUD regulations specifically cautioned that letters such as the HUD Letter were unofficial and would provide "no protection" from liability under RESPA. 24 C.F.R. 3500.4(b) (1997); 12 C.F.R. 1024.4 (2013). Thus, unlike *Encino Motors*, industry members had no reliance interest in the HUD Letter, and relied on it at their own risk. Further, unlike *Encino Motors*, the Director provided a detailed explanation for his interpretation of RESPA, and for his refusal to adopt the interpretation that PHH argued was set forth in the HUD Letter. Dec. at 17-18 (JA.17-18). To the extent that *Encino Motors* is relevant to this case, it suggests that *Chevron* deference is appropriate.

Respectfully submitted,

/s/ Lawrence DeMille-Wagman

Lawrence DeMille-Wagman

*Senior Litigation Counsel*

Consumer Financial Protection Bureau

1700 G Street, NW

Washington, D.C. 20552

(202) 435-7957

lawrence.wagman@cfpb.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2016, I electronically filed CFPB's response to Petitioner's Fed. R. App. P. 28(j) letter with the Clerk of the Court of the United States Court of Appeals for the District Columbia Circuit by using the appellate CM/ECF system. I certify that all participants in the case (including all amici) are registered CM/ECF users and that service on them will be accomplished by the appellate CM/ECF system.

/s/ Lawrence DeMille-Wagman

Theodore B. Olson  
Helgi C. Walker  
Scott P. Martin  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036

Mitchel Kider  
David M. Souders  
Sandra B. Vipond  
Michael S. Trabon  
Weiner Brodsky Kider PC  
1300 19th Street, N.W., Fifth Floor  
Washington, D.C. 20036

Thomas M. Hefferon  
William M. Jay  
Goodwin Procter LLP  
901 New York Avenue, N.W.  
Washington, D.C. 20001

Kathryn L. Comerford Todd  
Steven Paul Lehotsky  
U.S. Chamber Litigation Center  
1615 H Street, NW  
Washington, DC 20062

Jay N. Varon  
Jennifer Matilda Keas,  
Foley & Lardner LLP  
3000 K Street, NW  
Washington, DC 20007-5143

Gregory F. Jacob, Esquire  
O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, DC 20006-4001

Joseph R. Palmore  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, NW  
Suite 6000  
Washington, DC 20006-1888

David T. Case  
K&L Gates, LLP  
1601 K Street, NW  
Washington, DC 20006-1600

Andrew John Pincus,  
Mayer Brown, LLP  
1999 K Street, NW  
Washington, DC 20006-1101

C. Boyden Gray  
Adam Jeffrey White  
Boyden Gray & Associates  
1627 I Street NW, Suite 950  
Washington, DC 20006

Sam Kazman  
Hans Frank Bader  
Competitive Enterprise Institute  
1899 L Street, NW, 12th Floor  
Washington, DC 20036

Kirk Jensen  
Alexander S. Leonhardt  
BuckleySandler LLP  
1250 24th Street, NW, Ste. 700  
Washington, DC 20037