No. 15-1177

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PHH CORPORATION, ET AL.,
V.
CONSUMER FINANCIAL PROTECTION BUREAU

On Petition for Review of an Order of the
Consumer Financial Protection Bureau
No. CFPB-2014-CFPB-0002

BRIEF FOR THE CONSUMER MORTGAGE COALITION AS AMICUS CURIAE SUPPORTING PETITIONER

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STATEMENT REGARDING CONSENT TO FILE, SEPARATE BRIEFING, AUTHORSHIP AND MONETARY CONTRIBUTIONS

Pursuant to Federal Rule of Appellate Procedure 29(a), amicus curiae certifies that all parties in this case have consented to the filing of this brief.

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), amicus curiae CMC certifies that no party or party's counsel authored this brief in whole or in part, that no party or party's counsel provided any money that was intended to fund the preparation or submission of this brief, and no party or person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund the preparation or submission of this brief.

Pursuant to District of Columbia Circuit Rule 29(d), amicus curiae certifies that this separate amicus brief is necessary. No other brief of which we are aware illustrates for the Court the effect that the Director's decision will have on actual consumers. Because consumers will inevitably be affected by the outcome of this case, this brief is necessary for the Court to fully understand the consumer harm that will follow if the Court upholds the Director's incorrect and overbroad interpretation of Section 8 of RESPA.

Finally, amicus curiae supports the arguments advanced by both the petitioner and the other amici supporting the petitioner in this case, and has avoided repeating such arguments in this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and District of Columbia Circuit Rule 26.1, amicus curiae certifies that it has no outstanding shares or debt securities in the hands of the public nor a parent company. No publicly held company has a 10% or greater ownership interest in the amicus curiae.

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INTEREST OF THE AMICUS CURIAE

The Consumer Mortgage Coalition ("CMC") is a trade association of national mortgage lenders, servicers, and service providers. The CMC provides a forum for national mortgage lenders and servicers to discuss policy issues that impact their businesses and to develop a plan for the long-term restructuring of the mortgage finance industry.

The CMC regularly appears as *amicus curiae* in litigation with implications for the national mortgage lending marketplace. That is the case here, as the Director's decision will cause substantial harm to individual consumers. As a trade association whose members originate and service tens of thousands of loans every year, the CMC is uniquely positioned to speak to the consumer harm that will result from the Director's decision. If this Court permits the Director's decision to stand, it will retroactively overturn four decades of understanding regarding the mortgage origination process and harm consumers by reducing efficiency in the closing process, increasing closing costs, and extending the already lengthy mortgage closing process.

SUMMARY OF ARGUMENT

The Real Estate Settlement Procedures Act ("RESPA") was enacted, in large part, to protect consumers "from unnecessarily high settlement charges" and to eliminate "referral fees that tend to increase unnecessarily the costs" of real estate settlements. 12 U.S.C. § 2601(a-b). But to ensure that RESPA did not unduly limit the ability of competitive, private markets to operate in consumers' interests, Congress clarified that the referral prohibition should not be construed to eliminate "bona fide . . . compensation or other payment for goods or facilities actually furnished or for services actually performed." 12 U.S.C. § 2607(c)(2). This statutory limitation permits businesses that provide reasonably priced goods, services, and facilities to continue helping consumers without running afoul of the law. For over forty years, consumers have benefitted from the careful balance of interests that Congress built into Section 8 of RESPA. By design, RESPA also permits lenders to develop business structures that align risk retention and underwriting decisions while simultaneously protecting consumers. Section 8 has permitted—and for decades been interpreted to permit—unpaid referrals under clear rules, and these referrals provide important benefits to consumers as they navigate the complicated process of obtaining a mortgage loan. Section 8 also permits the development of a reinsurance market, which helps to keep mortgage

insurance affordable and available for those borrowers—in particular first-time homebuyers—who most need it.

The Director of the Consumer Financial Protection Bureau ("CFPB") has rejected this clear and longstanding rule and interpretation. Under the Director's decision, if there is any normal business relationship between two settlement service providers and there is also a referral, reasonable and bona fide fees paid during the business relationship—or even the possibility of such reasonable and bona fide fees—can be reclassified as referral fees and make the referral impermissible under RESPA. Under the Director's decision, a referral would only be permitted if there were no other business relationship or any business relationship was profoundly unsuccessful. Congress enacted Section 8 of RESPA to protect consumers from unreasonably high prices for settlement services caused by payments for business referrals, not to disrupt the market of providers that, working together, close millions of loans each year. The Director's decision not only upsets the balance struck by Congress, it also threatens to harm the very consumers that RESPA is designed to protect. The Director's decision to dismiss longstanding policy choices by Congress will substantially slow the mortgage closing process, raise prices for homebuyers, and exacerbate confusion for consumers, lenders, and the entire residential mortgage market.

ARGUMENT

I. CAPTIVE MORTGAGE REINSURANCE IS A FORM OF RISK RETENTION THAT BENEFITS CONSUMERS

One of Congress's primary goals in passing the Dodd-Frank Act was to ensure that loan originators—who bundle individual mortgage loans into securities and sell shares of these securities to investors—remain responsible not only for creating loans, but also for the future performance of these loans. *See* 15 U.S.C. § 78o-11(b)(2) (requiring "any securitizer to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party"). This concept of sharing risk—known as "risk retention"—ensures that lenders are, quite literally, invested in offering borrowers loans that they can repay. *See* S. Rep. No. 111-176, at 129 (2010) (noting that if "securitizers retain a material amount of risk, they have 'skin in the game'" and have an economic incentive to ensure that borrowers can repay their loans). Representatives from consumer advocacy organizations have emphasized the importance of risk retention to consumers. *See, e.g.,* John Taylor, President and CEO, National Community Reinvestment Coalition, Comment Letter on Proposed Credit Risk Retention and QRM Rule (October 29, 2013) ("*[W]hat is safe enough for consumers should be safe enough for investors*."). The Dodd-Frank Act implemented risk retention by

requiring an originator to own five percent of the assets for a covered security. 15 U.S.C. § 78o-11(c)(1)(B).

Not only did the Dodd-Frank Act codify risk retention, but it also created the CFPB, and since its inception CFPB officials have supported increased risk retention as a way to protect consumers by ensuring that lenders focus on the long-term performance of loans that they originate. Raj Date, formerly Deputy-Director of the CFPB, stated that "[Risk retention] is meant to align the interests of those who take risk, the investors, with those who make the underwriting decisions in the first place." Raj Date, CFPB, Remarks at the American Banker's Regulatory Symposium (Sept. 20, 2011). Rohit Chopra, while serving as the CFPB's Student Loan Ombudsman, noted how risk retention would improve the quality of the origination process for all asset classes: "[I]f a securitizer has skin in the game, more attention will be paid to the credit characteristics of the underlying collateral." Rohit Chopra, CFPB, Keynote Remarks at the Federal Reserve Bank of St. Louis (Nov. 18, 2013). Similarly, a report from the Federal Reserve Board to Congress notes, "[B]y retaining a portion of the credit risk, the securitizer and/or originator will have an incentive to exercise due care in making underwriting

decisions . . . ." FEDERAL RESERVE BOARD, REPORT TO THE CONGRESS ON RISK RETENTION 6 (2010).[1]

Captive mortgage reinsurance provides an additional form of risk retention that furthers Congress's—and the CFPB's—goal of protecting consumers. Under traditional mortgage insurance, if a consumer is unable to repay a loan, the mortgage insurance company pays the owner of the loan a portion of the unpaid balance to offset their losses. Under a *captive* mortgage reinsurance arrangement, the mortgage insurance company is partially reimbursed for the money it pays to the owner of the loan by the captive reinsurance company, which is in turn owned by the original lender. Thus, when a loan fails, the original lender who approved and issued the loan will lose money as owner of the captive reinsurance company. Just as risk retention under the Dodd-Frank Act aligned the interests of originators, investors, and consumers, captive reinsurance ensures that, the original lender will be financially harmed if the loans it underwrites later fail.

Captive mortgage reinsurance not only provides risk retention, but in many ways it provides a better form of risk retention than the Dodd-Frank Act's five percent rule. Captive mortgage reinsurance applies to *all* loans where the

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[1] Further, when the multi-agency risk retention rule was implemented in 2014, it was clear that risk retention would "provide securitizers an incentive to monitor and ensure the quality of the securitized assets underlying a securitization transaction, and, thus, helps align the interests of the securitizer with the interests of investors." Credit Risk Retention Rule, 79 Fed. Reg. 77,604-05 (Dec. 24, 2014).

mortgage insurance company uses the captive reinsurer, including those that are not securitized or are otherwise exempt from the Dodd-Frank Act's risk retention requirements. *See* 12 C.F.R. § 244.13 (exempting securities that consist entirely of "qualified residential mortgages" from risk retention requirements).[2] While a third party who hopes to purchase a mortgage loan pool may only require specific underwriting characteristics—*e.g.* minimum credit scores, maximum loan-to-value or debt-to-income ratios—captive reinsurance forces creditors to be wary of all risks to a consumers ability to repay a loan, even those not explicitly noted by investors. And because mortgage insurance (and therefore reinsurance) travels with each individual loan, the lender remains responsible for a loan's performance even if the mortgage backed security is dissolved.

II. BY DISCOURAGING A SIGNIFICANT NUMBER OF KEY REFERRALS, THE DIRECTOR'S DECISION MAKES IT HARDER FOR CONSUMERS TO OBTAIN AFFORDABLE LOANS AND SETTLEMENT SERVICES.

A. Referrals Provide Important Benefits to Consumers in a Complicated Mortgage Market.

For most American families, buying a home with a mortgage is the most complicated and "most substantial financial transaction they will complete in their

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[2] Barney Frank, formerly the Chairman of the House Financial Service Committee and one of the name sponsors of the Dodd-Frank Act, recently emphasized that "there is no residential mortgage risk retention" for loans that meet the qualified residential mortgage standard. Floyd Norris, *Banks Again Avoid Having Any Skin in the Game*, N.Y. TIMES, Oct. 23, 2014. Captive mortgage reinsurance, however, would cover many of these loans.

lifetimes." CFPB, MORTGAGE CLOSINGS TODAY: A PRELIMINARY LOOK AT THE ROLE OF TECHNOLOGY IN IMPROVING THE CLOSING PROCESS FOR CONSUMERS at 7 (Apr. 2014) [hereinafter "MORTGAGE CLOSINGS TODAY"]. Speaking in 1974—during the debate over RESPA and when mortgage transactions only involved a fraction of the complexity required today—Chief Justice Burger told the American Law Institute, "[T]itle and transfer processes cry out for reexamination and simplification. They are unduly complex and therefore unduly expensive." 120 CONG. REC. H8326 (daily ed. Aug. 14, 1974) (statement of Rep. Stark). Forty years later, there are a large—and ever-growing—number of laws, regulations, judicial decisions, and consent orders that govern the loan origination process. *See, e.g.*, MORTGAGE CLOSINGS TODAY at 7 ("[T]he closing package is large and complex due to the high number of federal, state, and local regulations requiring disclosures . . . ."); CFPB Examination Procedures: Mortgage Origination (May 2015) (setting forth fifty pages of guidelines for CFPB examiners to follow when evaluating compliance with mortgage origination laws).[3] According to Director

[3] Origination requirements arise from several federal statutes, including the Truth in Lending Act, Pub. L. No. 90-321, 83 Stat. 146 (1968), the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 108 Stat. 2190 (1994), the Real Estate Settlement Procedures Act of 1974, Pub. L. No. 93-533, 88 Stat. 1724 (1974), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Pub. L. No. 110-283, 122 Stat. 2810 (2008), the Fair Credit Reporting Act, Pub. L. No. 90-321, 84 Stat. 1128 (1970), the Equal Credit Opportunity Act, Pub. L. No. 93-495, 88 Stat. 1521 (1974), the Fair Housing Act, Pub L. No. 90-284, 82 Stat. 81 (1968); the Home Mortgage Disclosure Act of 1975, Pub. L. No. 94-200,

Cordray, "Buying a home is one of the biggest financial decisions most people will make in their lifetimes, but navigating the closing process can be a challenge. . . . [T]he process is overly complex and stressful for consumers." MORTGAGE CLOSINGS TODAY at 2-3 (message from Director Richard Cordray). No one entity can provide all of the services required to close a loan: real estate agents, brokers, lenders, underwriters, processors, title insurers, mortgage insurers, appraisers, credit bureaus, closing attorneys, and document recordation services must coordinate for a consumer to obtain financing and purchase a home. With $466 billion in new mortgage originations in the first quarter of 2015 alone, the ability to close a mortgage quickly, reliably, and efficiently is critical not only to individual consumers' ability to purchase homes and build wealth, but also to the entire economy. Equifax, Press Release: First Quarter Mortgage Originations Soar (June 29, 2015).

Congress passed RESPA with two goals in mind: to protect consumers from unknowingly paying high settlement charges, and to provide an efficient settlement

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89 Stat. 1125 (1975), the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-299, 114 Stat. 464 (2000), the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, 113 Stat 1338 (1999), and the Dodd-Frank Act's prohibition of unfair, deceptive, or abusive acts or practices, Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010). Almost every one of these acts has an implementing rule, as well as informal regulatory guidance, binding judicial precedent, and new regulatory expectations that have arisen through enforcement actions such as this one.

process for borrowers. RESPA aims "to further the national goal of encouraging homeownership by regulating certain lending practices and closing and settlement procedures . . . to the end that unnecessary costs and difficulties of purchasing housing are minimized . . . ." H. Res. 1252, 93d Cong., 2d Sess. (July 24, 1974). Speaking about the bill, Sen. William Brock made clear that consumers are often at a loss for how to close a loan, and referrals are thus a necessary part of a mortgage loan: "The lack of understanding on the part of most home buyers about the settlement process and its costs, which lack of understanding makes it difficult for a free market for settlement services to function at maximum efficiency . . . " 120 CONG. REC. S8807-8808 (daily ed. May 22, 1974) (statement of Sen. Brock). The average consumer only enters into a handful of mortgage transactions during his or her life—far too few to navigate this "unduly complex" process alone. If, after finding a house and signing a contract, a consumer had to find their own lender, property insurer, mortgage insurer, title insurer, closing agent, and other required settlement service providers on their own, the consumer would face substantial hurdles to closing a loan on time.

Unpaid referrals solve this problem by allowing service providers whom the consumer may know and trust to provide consumers with information about other service providers necessary to complete a home mortgage transaction. Since the passage of RESPA in 1974, consumers have benefitted from unpaid referrals in a

number of ways. Rather than limiting the information available to a consumer during this critical time, a real estate agent, broker, or lender can refer the consumer to those that can help close the loan quickly and on time. So long as any payments are not for referrals, but are "bona fide" payments "for goods or facilities actually furnished or for services actually performed," referrals are permitted. 12 U.S.C. § 2607(c)(2). Furthermore, referrals keep prices low for consumers by letting businesses work together over time and develop efficiencies. For decades, these sorts of unpaid referrals have facilitated millions of homebuyers in moving through an overwhelming, complicated process with ease. And during this period, federal banking regulators have carefully considered—and approved—captive reinsurance arrangements almost identical to the arrangement in this case. *See* Corporate Decision of J. Williams, Chief Counsel of the Office of the Comptroller of the Currency ("OCC"), to S. Moe, Vice Pres. Citibank, N.A., No. 99-26 (Sept. 2, 1999) (approving an application to create a captive reinsurance subsidiary that would only reinsure loans that the bank originated); Letter from C. Buck, Chief Counsel of the Office of Thrift Supervision ("OTS"), to undisclosed recipient, at 2 (Nov. 2, 1998) ("The OCC has issued a number of interpretive letters stating that it is permissible under the National Bank Act for a bank to establish an operating subsidiary to reinsure a portion of the mortgage insurance on loans originated or purchased by the parent bank or one of its affiliates.").

B. The Director's Overbroad Decision Discourages These Essential Referral Services.

The Director's expansive misinterpretation of Section 8 will undermine Congressional intent, unwind decades of progress, and leave consumers struggling to close a mortgage loan.[4] The Director has taken the position that a payment is only "bona fide" if it is "solely for the service actually being provided on its own merits, but cannot be a payment that is tied in any way to a referral of business." In re PHH Corp., et al., CFPB No. 2014-CFPB-0002 (June 4, 2015) [hereinafter "Director Dec."]. This interpretation of Section 8 of RESPA ignores the longstanding view that payments are bona fide if they are reasonable compensation for a service that was actually provided. Letter from N. Retsinas, Ass't Sec'y for Hous.-Fed. Hous. Comm'r HUD, to S. Samuels, Countrywide Funding Corp. (Aug. 6, 1997) ("The Department [HUD] will evaluate whether the compensation is commensurate with the risk and, where warranted, administrative costs."). For years, those involved in mortgage originations have served consumers by expanding the number of origination-related products that they can offer to consumers. If the Director's retroactive interpretation stands, the number of products available to consumers—and consumer information about and choice in the market—will decrease, as settlement service providers will fear that reasonable

[4] We rely upon Petitioners to develop the argument that the Director erred in interpreting Section 8; we limit our argument in this brief only to the consumer harm that will result from the Director's incorrect reading of Section 8.

fees for services actually provided in one transaction will be viewed as paid referrals for other, unrelated services.

More troubling than the Director's view that reasonable compensation for services actually rendered can be a prohibited referral fee, however, is his view that a referral fee can be as little as "the *opportunity* to participate in a money-making program" without regard to the limitations imposed by Section 8(c) of RESPA. Director's Dec. 18 (emphasis added). When a loan finally closes, there are many bona fide service providers—lenders, brokers, agents, title companies, insurers, and others—who have the opportunity to receive payment. The definitions of "thing of value" in RESPA and Regulation X are broad, 12 U.S.C. § 2602(2); 12 C.F.R. § 1024.14 (d); to prevent the sort of overreach in the Director's decision, Section 8(c) of RESPA explicitly excludes from the definition of referral fees instances in which the purchaser pays fair market value for goods and services rendered. *See* 12 U.S.C. § 2607(c)(2) ("Nothing in this section shall be construed as prohibiting . . . the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed . . . ."). Under the Director's overbroad interpretation—which directly contradicts Section 8(c)—every referral could be a Section 8 violation because there is always an opportunity to make money, even if there is an agreement to pay fair market value, even if the loan does not close, and even if there is no actual

exchange of funds. And with the Director's decision to impose a retroactive nine-figure penalty for a business structure that was expressly considered legal for decades, it is a near-certainty that this cost (and the risk of future expensive settlements) will be passed on to consumers by all who offer settlement services.

Taken as a whole, the Director's decision undermines the entire system of unpaid referrals that is necessary to a functioning, efficient market for settlement services. Under the Director's decision, if there is a business relationship in any context between the settlement service provider who makes the referral and the one who receives the referral, the money paid in the business relationship are at risk of being reclassified as a referral fee. And there need not be any exchange of funds between the two settlement service providers—merely the opportunity to receive fair market value for services rendered at some future time is enough to be deemed a "fee." Mortgage closings rely upon a sound system of referrals—if no one is willing to make a referral for fear that the CFPB will later find some material benefit and recharacterize a legal referral as RESPA violation, this will only discourage referrals and harm consumers. The Director's decision, if upheld, will also declare illegal a practice that has been explicitly approved by the OCC (which does have RESPA enforcement authority) and the OTS (which had RESPA enforcement authority until it was dissolved). *See* 12 U.S.C. § 1818(b). Rather than protecting consumers, this regulatory inconsistency between other banking

regulators and the CFPB will only serve to make it more difficult, expensive, and slow to close mortgage loans.

This is not an idle concern. Overnight, the Director's decision has led to serious concern throughout the industry. For example, the National Association of Realtors has said that the PHH decision creates "doubt or confusion" regarding what services its members can provide to homebuyers. Brad Finkelstein, *Are All Marketing Services Agreements Illegal? Don't Go There*, NAT'L MORTGAGE NEWS (Aug. 21, 2015). In response to the Director's decision here—and other Bureau actions regarding Section 8—several major national lenders have publicly abandoned existing marketing and advertising services agreements that have operated without issue for years. *Id.* Our members remain concerned that, if the Director's decision is upheld, it could dramatically reduce the number of legitimate and consumer-friendly referrals and make the mortgage origination process a longer, more expensive, and more difficult process for all consumers.

III. A STRONG MORTGAGE REINSURANCE MARKET BENEFITS THE LEAST AFFLUENT MORTGAGE BORROWERS.

Many borrowers cannot obtain a home mortgage loan without mortgage insurance, yet the Director's decision will make housing finance and settlement services more expensive for consumers. Secondary market loan purchasers—including Fannie Mae and Freddie Mac—require mortgage insurance for most loans where the amount of money borrowed by the consumer is greater than eighty

percent of the appraised value of the property. *See* Fannie Mae Selling Guide, B7-1-01: Provision of Mortgage Insurance (July 28, 2015); Freddie Mac Single-Family Seller/Servicer Guide, 27.1: Mortgage Insurance (Apr. 9, 2015). In practice, older and more affluent consumers find it easier to come up with a twenty percent down payment, while younger consumers and first-time homebuyers often must make a smaller down payment and purchase mortgage insurance. According to the Office of the Comptroller of the Currency ("OCC"), "Mortgage insurance has played a vital role in helping low and moderate-income families become homeowners by allowing families to buy homes with less cash. Mortgage insurance also has expanded the secondary market for low down payment mortgages and the funding available for these loans." Corporate Decision of J. Williams, Chief Counsel of the OCC, to S. Moe, Vice Pres. Citibank, N.A., No. 99-26 at 2 (Sept. 2, 1999).

By protecting mortgage insurers, mortgage reinsurance increases the availability of sufficient, safe, and affordable mortgage insurance for consumers. Mortgage reinsurance reduces the geographical risk that mortgage insurance companies may face by spreading the potential harm from devastating local events, like natural disasters, across a broader geographic base. J. DAVID CUMMINS, REINSURANCE FOR NATURAL AND MAN-MADE CATASTROPHES IN THE UNITED STATES: CURRENT STATE OF THE MARKET AND REGULATORY REFORMS (June 22,

2007).[5] Reinsurance also lets primary mortgage insurance companies share their risk with reinsurers—this both increases the number of policies that they can issue and reduces per-loan overhead costs, both of which in turn reduce the costs for individual consumers.[6] In particular, captive mortgage reinsurance aligns lenders' and insurers' incentives by having lenders shoulder a larger portion of the burden if their loans fail.[7] Indeed, in the instant case, there were several years during which the reinsurer paid more out in reinsurance claims than it accepted as insurance premiums. Far from harming consumers, this is a concrete instance in which

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[5] *See also* SCOTT E. HARRINGTON, PH. D., NAT'L ASS'N OF MUTUAL INS. COS., THE FINANCIAL CRISIS, SYSTEMIC RISK, AND THE FUTURE OF INSURANCE REGULATION at 19 (Sept. 2009):

> To be sure, low probability events with large losses, such as severe hurricanes, can simultaneously damage many property/casualty insurers. The impact can be spread broadly among insurers through product line and geographic diversification and reinsurance, which creates contractual interdependence among insurers. Large insurance losses and asset shocks can temporarily disrupt property/casualty insurance markets, sometimes contributing to market "crises" with some adverse effect on real economic activity.

[6] To protect residential mortgages in Canada, the Canadian government provides mortgage reinsurance directly. *See* JANE LONDERVILLE, THE MACDONALD-LAURIER INSTITUTE FOR PUBLIC POLICY, MORTGAGE INSURANCE IN CANADA (NOV. 2010); PROMONTORY FINANCIAL GROUP, THE FUTURE GOVERNMENT ROLE IN THE U.S. MORTGAGE SECURITIZATION MARKET at 40 (July 2013) ("[T]he Canadian government provides reinsurance against 90% of the risk underwritten by PMIs [private mortgage insurers].").

[7] For a more detailed analysis of the consumer benefits from risk retention through captive mortgage reinsurance, see discussion at Section I, *supra*.

reinsurance stabilized profits and losses for the mortgage insurers and helped to provide the continuing availability of mortgage insurance for consumers. Director Dec. 5; *see also* In re PHH Corp. et al., Recommended Decision 33, CFPB No. 2014-CFPB-0002 (Nov. 25, 2014) (noting that Atrium paid reinsurance claims amounting to $127.7 million to address UGI's losses, and $28.6 million to address Genworth's losses).

The Director's decision, however, weakens the mortgage reinsurance market and harms several vulnerable populations of consumers. By targeting mortgage reinsurance—and captive mortgage reinsurance in particular—the Director's decision undermines the increased stability, availability, and affordability that reinsurance brings to the mortgage insurance market. Further, the harm that will result from weakening the reinsurance market will most affect those groups who actually purchase mortgage insurance: first time homebuyers, those who can only afford lower down payments, and others vulnerable consumers.

CONCLUSION

For the reasons stated above and in Petitioners' brief, the Director's decision below should be reversed.

Dated: October 5, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,293 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 23(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2015, the foregoing Brief of Amicus Curiae Consumer Mortgage Coalition Supporting Petitioner has been electronically served and filed through the Court's CM/ECF system upon all registered users in accordance with the below.

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