

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING)
File No. 2015-CFPB-0029)
In the matter of:)
INTEGRITY ADVANCE, LLC and)
JAMES R. CARNES)
_____)

**RESPONDENTS’ OBJECTION
TO BUREAU’S REQUEST FOR
ISSUANCE OF SUBPOENA**

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INTRODUCTION

Respondents Integrity Advance, LLC and James R. Carnes (collectively, “Respondents”), request that this Court deny the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) request for issuance of a subpoena to Respondents (“Request”), as inappropriate, unreasonable, excessive in scope, and unduly burdensome. 12 U.S.C. § 1081.208(d). The Request is overly broad and seeks extensive transactional data that goes back eight years in time. As the Bureau knows—indeed pleads in its Notice of Charges—the Company is no longer operational and has not made a loan in more than three years. The Request should be denied, as to Request Nos. 1 and 2 of Attachment A of the intended subpoena.¹ The Bureau’s request is untimely, unduly burdensome and exceeds the scope of the Notice of Charges.

ARGUMENT

The Court has discretion to refuse to issue the subpoena, and should refuse to issue the subpoena when the requested information is “unreasonable, oppressive, excessive in scope or

¹ Respondents will produce any statements responsive to Request No. 3 by March 31, 2016.

unduly burdensome.” *See id.* § 1081.208(d). The Court may also issue a modified subpoena “upon such conditions as fairness requires.” *Id.*

Here, the Bureau requests “all consumer transaction data” for any consumer that originated a loan with Integrity Advance. The Bureau makes this onerous request, notwithstanding the fact that nearly three years ago Integrity Advance furnished a substantial file with much of this same transactional data in response to the CID. Of course, during its two plus-year investigation, the Bureau had an opportunity to ask for additional transactional data, as well as a data dictionary to interpret the data that it received. Instead, the Bureau has waited until just now—the eleventh hour—to seek transactional data that “provide[s] a complete picture of all the transactions that occurred” and that enables the Bureau to first “identify which consumers were harmed.” Req. at 2. Indeed, the Bureau should have—and could have—made this obvious and foreseeable data request years ago. Of course, as the Bureau knows, Integrity Advance is no longer operational, no longer has ready access to the substantial transactional data requested, and, obviously, no longer has any employees who could gather that data or furnish a data dictionary. At this point, it would be near impossible for Respondents to comply with Request Nos. 1 and 2 of the Bureau’s intended subpoena.² These requests are untimely and not appropriate for the administrative litigation the Bureau has *chosen* to pursue.

The Bureau’s Rules, in fact, disfavor the precise type of “discovery” request that the Bureau intends to make here. Specifically, those Rules contemplate expedited litigation. Discovery in the administrative enforcement setting is not like discovery in a civil lawsuit, where judicial process may be the only meaningful way to access information vital to a party’s case—in administrative enforcement, fact gathering is contemplated to have occurred during an

² Respondents’ counsel explained this difficulty to the Bureau’s Enforcement Counsel during a telephone conversation on February 2, 2016.

investigation. *See* 12 C.F.R. §§ 1080.6, 1080.7 (providing the CFPB broad investigatory tools). In fact, the Bureau has explained in the Federal Register that through Rule 206, “traditional document discovery [is] largely unnecessary” and that forgoing such additional discovery “will lead to a faster and more efficient resolution of Bureau administrative proceedings, saving both the Bureau and respondents the resources typically expended in the civil discovery process.” *See* 77 Fed. Reg. 39058, 39070 (June 29, 2012). The Commentary to Rule 208 further highlights this approach and does not support the Bureau’s efforts to significantly supplement (or supplant) its investigation through subpoenas, of the type it seeks issuance here. *See id.* (noting that “[t]he availability of subpoenas for witnesses and documents ensures that *respondents* have available to them the necessary tools to adduce evidence in support of their defenses”) (emphasis added). During its lengthy investigation of Respondents, the Bureau had more than adequate opportunity to seek (and likely obtain) all of the transactional data it seeks now when Integrity Advance is no longer operational and able to furnish this data.

The Bureau’s request here is also excessive in scope and unduly burdensome. The Bureau seeks the same information already furnished (nearly 86,000 separate transactions, in fact), but on a drastically and unnecessarily larger scale, in terms of time and scope. At least one administrative court deemed a similar request to be unreasonable and excessive precisely for that reason. *See BDO China Dahua CPA Co., Ltd.*, 106 S.E.C. Dkt. 3015, 2013 WL 11113054 at *2 (June 26, 2013)). In that case, the court noted that, like here, “[t]he Subpoena Request reads like a discovery request, not a trial subpoena, and it is puzzling why some of the requested documentation was not at least requested during the investigation leading to this proceeding.” *Id.*

Finally, the Bureau’s request for transactional data exceeds the scope of the Notice of Charges. Specifically, the Bureau seeks data on two additional and not previously-requested

data points, which relate, if at all, only to Count VII, which alleges unfair conduct pertaining to demand drafts, arising under the Bureau's unfair, deceptive, or abusive acts or practices ("UDAAP") authority. Notice ¶¶ 88–94. The Bureau, of course, has already conceded that its UDAAP claims concern only conduct that post-dates July 21, 2011. Thus, on its face, the transactional data is exceedingly and impermissibly broad, as the subpoena seeks information about "all consumers who originated loans with Integrity Advance," regardless of when those loans were originated or when a customer made payments on those loans. Req. at 2 (emphasis added.) A request for data related to "all" consumers is fundamentally at odds with a narrowly tailored subpoena, which is a minimum requirement in an administrative proceeding, like this one. *See, e.g., BDO China Dahua*, 2013 WL 11113054 at *2 (noting that categories requesting "every," "each," or "all" China-based U.S. clients for whom respondents performed or referred work could "surely" be "narrowed to something more reasonable and pertinent to this proceeding"); *see also PHH Corp.*, No. 2014-CFPB-0002, Order Granting In Part Request for Issuance of Subpoena (May 15, 2014) (limiting subpoena requests where "[t]he lack of temporal limitation potentially renders the Subpoena Request very broad . . .").

CONCLUSION

For all of the foregoing reasons, the Court should decline to issue the Bureau's intended subpoena as to Request Nos. 1 and 2, seeking unlimited transactional data and an accompanying data dictionary, which Respondents have no way to provide at this late date.

Dated: February 5, 2016

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CERTIFICATION OF SERVICE

I hereby certify that on the 5th day of February 2016, I caused a copy of the foregoing Answer to be filed by electronic transmission (e-mail) with the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil) and Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by electronic mail on the following parties who have consented to electronic service:

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