

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

**ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029**

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)	
In the Matter of:)	
)	JOINT UPDATE ON FACT
)	DEVELOPMENT REGARDING
)	STATUTE OF LIMITATIONS
)	ISSUE
)	
INTEGRITY ADVANCE, LLC and)	
JAMES R. CARNES,)	
)	
Respondents.)	
)	
)	

**JOINT UPDATE ON FACT DEVELOPMENT
REGARDING STATUTE OF LIMITATIONS ISSUE**

In an August 30, 2019 Scheduling Order, Administrative Law Judge (ALJ) Christine L. Kirby ordered the parties to meet and confer regarding the current record in this matter relating to the statute of limitations issue. Dkt. 233, at 4. The ALJ further directed the parties to submit this Joint Update to inform the ALJ whether the parties agree that the current record is sufficient regarding that issue. *Id.* Finally, the ALJ ordered the parties to identify documents in the current record that are relevant to the statute of limitations issue. *Id.*

The parties met and conferred on September 5, 2019. After further discussion regarding the current record, the parties continue to hold the positions expressed in their August 14, 2019 Joint Proposed Pre-Hearing Schedule (Dkt. 228) and in their August 23, 2019 Joint Statement on Fact Development Regarding Statute of Limitations Defense (Dkt. 231): Respondents argue that further factual development is necessary to determine the date of ‘discovery’ for purposes of the statute of

limitations issue, and Enforcement Counsel asserts that between the current record and the facts to which Enforcement Counsel has already stipulated or is willing to stipulate, there already exists a true and factual record that is sufficient to resolve this issue, although Enforcement Counsel agrees additional briefing is appropriate.

Respondents also note that they have asked Enforcement Counsel to provide information about the dates on which certain events occurred that Respondents believe are relevant to determining the date of ‘discovery’ (i.e., date on which CFPB first reviewed complaints about Respondents, date on which CFPB opened the research matter, date on which CFPB opened the investigative matter, date on which someone from CFPB first viewed the loan agreement, date on which the Investigative Memo was drafted). Enforcement Counsel has declined to provide this information, asserting that such information is irrelevant, privileged, or both. Respondents further note that Enforcement Counsel has declined to identify the date on which they believe the CFPB discovered the potential violations and declined to identify an event that could give rise to that discovery. Enforcement Counsel asserts that Respondents’ demand for such information misconstrues how the CFPA’s statute of limitations operates, and that by raising the issue in this Joint Update, Respondents contravene the ALJ’s instruction to limit this filing to non-substantive matters. Enforcement Counsel will not reply substantively to Respondents’ point in this Joint Update, and will reserve its response for future briefing, if necessary.

The parties have, however, identified the following undisputed facts relating to the statute of limitations issue that either already exist in the record or to which the parties are willing to stipulate¹:

¹ While the parties agree that these facts are undisputed and that they relate to the statute of limitations issue, the parties do not agree on whether, or the extent to which, each fact is relevant to that issue.

1. Under 12 C.F.R. § 1081.206 (“Rule 206”), Enforcement Counsel has produced to Respondents, among other things, “documents obtained by the Office of Enforcement prior to the institution of proceedings, from persons not employed by the Bureau, in connection with the investigation leading to the institution of such proceedings.” *See* 12 C.F.R. § 1081.206.
2. As part of its Rule 206 production, Enforcement Counsel produced a PDF indicating that an individual in the Office of Enforcement searched the Federal Trade Commission’s Consumer Sentinel database of consumer complaints for the term “Integrity Advance” on March 29, 2012. *See* Sentinel Search Printout (Dkt. 189-B), attached to Decl. of Peter S. Frechette (Dec. 5, 2016) (Dkt. 189).
3. The Bureau sent a civil investigative demand (“CID”) for document requests and interrogatories to Integrity Advance on January 7, 2013. *See* Parties’ Joint Stipulations of Fact (Mar. 23, 2016) (Dkt. 056) ¶ 16; Decl. of Alusheyi J. Wheeler (Dec. 5, 2016) (Dkt. 187) (“Wheeler Decl.”) ¶ 3 and Exh. A (copy of CID).
4. The January 7, 2013 CID issued to Integrity Advance was the first CID that the Bureau directed to Integrity Advance. Wheeler Decl. ¶ 4.
5. On October 25, 2013, Integrity Advance made an initial partial production in response to that CID. Integrity Advance largely completed its production in December 2013. Wheeler Decl. ¶¶ 5-6.
6. Integrity Advance’s response to the January 7, 2013 CID included a copy of Integrity Advance’s loan agreement. Wheeler Decl. ¶ 12.
7. Enforcement Counsel took the investigational hearing testimony of Respondent James Carnes on June 17, 2014.
8. Enforcement Counsel took the investigational hearing testimony of Edward Foster on June 24, 2014.
9. Before the Office of Enforcement recommends that the Bureau commence enforcement proceedings, the Office of Enforcement may give the subject of such recommendation notice of the nature of the subject’s potential violations and may offer the subject the opportunity to submit a written statement in response. The objective of the notice is to ensure that potential subjects of enforcement actions have the opportunity to present their positions to the Bureau before an enforcement action is recommended or commenced. *See* CFPB Bulletin 2011-4 (Enforcement), Notice and Opportunity to Respond and Advise (NORA) (Nov. 7, 2011, updated Jan. 18, 2012), <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/bulletin-notice-opportunity-respond-advise/>.
10. Enforcement Counsel issued a Notice and Opportunity to Respond and Advise (“NORA”) letter to Respondents on October 23, 2014, stating that the “CFPB’s Office of Enforcement is considering recommending that the Bureau take legal action against” Respondents. Wheeler Decl. ¶ 8.

11. Respondents provided a NORA response to Enforcement Counsel on November 13, 2014. Wheeler Decl. ¶ 9.
12. Enforcement Counsel filed its Notice of Charges on November 18, 2015.

Because the parties have conflicting positions regarding whether the current factual record is sufficient on the statute of limitations issue, Enforcement Counsel will submit a brief to the ALJ by September 18, 2019, Respondents will respond to that brief by October 4, 2019, and Enforcement Counsel will submit a reply brief by October 15, 2019, all in compliance with the ALJ's August 30, 2019 Scheduling Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September 2019, I caused a copy of the foregoing Joint Update on Fact Development regarding Statute of Limitations Issue to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), and served by email on opposing counsel at the following addresses:

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