United States Government Accountability Office

Report to the Committee on Health, Education, Labor, and Pensions, U.S. Senate

June 2014

PENSION ADVANCE TRANSACTIONS

Questionable Business Practices Identified

GAO-14-420

GAO Highlights

Highlights of GAO-14-420, a report to the Committee on Health, Education, Labor, and Pensions, U.S. Senate

Why GAO Did This Study

There have been recent concerns about companies attempting to take advantage of retirees using pension advances. GAO was asked to review business practices related to pension advances. This report (1) describes the number and characteristics of pension advance companies and marketing practices; (2) evaluates how pension advance terms compare with those of other products; and (3) evaluates the extent to which there is related federal oversight. GAO identified 38 pension advance companies and related marketing practices using company websites and nonpublic databases. GAO conducted a more-detailed nongeneralizable assessment of 19 of these companies selected based on factors such as marketing claims and presence of or lack of complaints. GAO used undercover investigative phone calls to identify additional marketing practices and to obtain pension advance offers. This information was compared with the terms of other financial products, such as personal loans. View videos of undercover investigative calls to selected pension advance companies. GAO also examined the role of selected federal agencies with oversight of consumer protection and pension issues.

What GAO Recommends

GAO recommends that CFPB and FTC review the pension advance practices identified in this report and exercise oversight or enforcement as appropriate. GAO also recommends that CFPB coordinate with relevant agencies to increase consumer education about pension advances. CFPB and FTC agreed with GAO's recommendations.

View GAO-14-420. For more information, contact Stephen M. Lord at (202) 512-6722 or lords@gao.gov.

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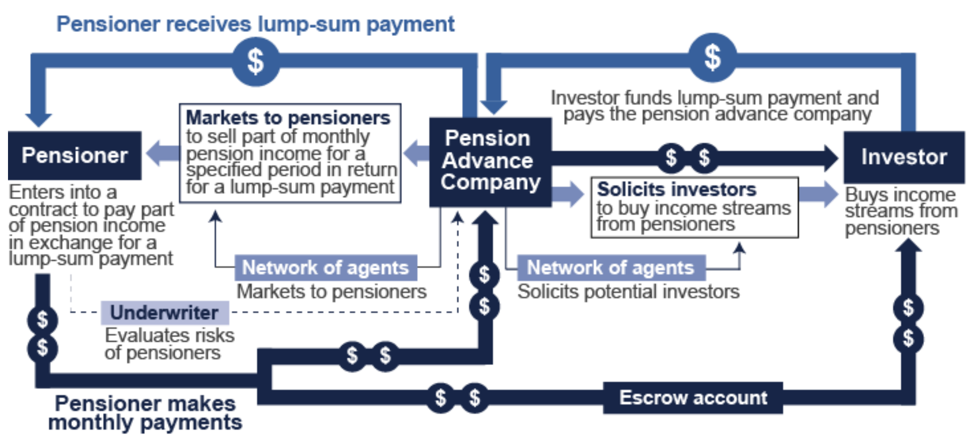
Questionable Business Practices Identified

What GAO Found

GAO identified at least 38 companies that offered individuals lump-sum payments or "advances" in exchange for receiving part or all of their pension payment streams. Eighteen of these companies were concentrated in one state, and 17 offered a range of other financial products in addition to pension advances. The 38 companies used multistep pension advance processes that included various other parties (illustrated below). At least 21 of the 38 companies were affiliated with each other in ways that were not apparent to consumers. All of the companies operated primarily as web-based companies, and some targeted financially vulnerable consumers with poor or bad credit nationwide.

Parties Involved in the Multistep Pension Advance Processes That GAO Reviewed



Source: GAO.

GAO received offers from 6 out of 19 pension advance companies. These offers did not compare favorably with other financial products or offerings, such as loans and lump-sum options through pension plans. For example, the effective interest rates on pension advances offered to GAO during its undercover investigation typically ranged from approximately 27 percent to 46 percent, which were at times close to two to three times higher than the legal limits set by the related states on the interest rates assessed for various types of personal credit.

GAO identified questionable elements of pension advance transactions related to the disclosure of rates or fees, and certain unfavorable terms of agreements. The Bureau of Consumer Financial Protection (CFPB) and Federal Trade Commission (FTC) have oversight responsibility over certain acts and practices that may harm consumers. According to CFPB officials, CFPB's oversight has been limited to instances where products met certain characteristics. FTC officials stated that FTC has not taken any public enforcement actions because it has not received many complaints, among other reasons. Six other federal agencies have oversight over pensions and provide related education. These agencies provided limited consumer education regarding pension advance transactions, but almost all agreed that it would be beneficial. Consumers who are vulnerable to financial exploitation may lack the information needed to make sound decisions. CFPB facilitates coordinating federal financial education and could help ensure information reaches relevant pensioners.

Contents

Abbreviations

1933 Act	Securities Act of 1933
1934 Act	Securities Exchange Act of 1934
CFPB	Bureau of Consumer Financial Protection
DOD	Department of Defense
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
DOL	Department of Labor
EBSA	Employee Benefits Security Administration
ERISA	Employee Retirement Income Security Act of 1974
FINRA	Financial Industry Regulatory Authority
FTC	Federal Trade Commission
FTC Act	Federal Trade Commission Act
IRS	Internal Revenue Service
NCLC	National Consumer Law Center
OPM	Office of Personnel Management
PBGC	Pension Benefit Guaranty Corporation
SEC	Securities and Exchange Commission
TILA	Truth in Lending Act
Treasury	Department of the Treasury
UDAP	Unfair and Deceptive Acts and Practices
VA	Department of Veterans Affairs

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June 4, 2014

The Honorable Tom Harkin
Chairman
The Honorable Lamar Alexander
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

Pensions are the foundation of economic security in retirement for millions of middle-class families and play a critical role in ensuring financial security at retirement. During an individual's retirement years, pensions are often the key source of income that allows the retiree, along with Social Security, to maintain a reasonable standard of living. Thus, a partial loss of pension benefits can significantly affect a retiree's ability to pay monthly living expenses, medical bills, or other unexpected expenses. Recent media coverage has highlighted marketing efforts of companies to encourage borrowing against pensions—generally referred to as pension advances—and has indicated that some companies may be attempting to take advantage of financially distressed retirees who are in immediate need of a large sum of cash.[1]

In 2010, the U.S. Census Bureau reported that the number of Americans age 65 and older is projected to more than double over the next 40 years, reaching almost 89 million in 2050. Also, a 2011 study by the MetLife Mature Market Institute on elder financial abuse reported that older Americans lose an estimated $2.9 billion annually to financial exploitation

[1]Pension advance transactions have two major components: (1) pension advances—up-front lump-sum payments provided to consumers in exchange for a certain number (and dollar amount) of the consumers' future pension payments plus various fees and (2) pension investments—pension stream payments provided to investors in exchange for providing the lump sums. For purposes of this report, we focused more on the pension advance component of pension advance transactions, rather than on the pension investment component, in order to focus on the direct impact on pensioners.

when factoring in estimated unreported losses.[2] These statistics highlight that the elderly population will grow significantly in the next few decades as well as concerns about the population's vulnerability to abuse and related financial exploitation. The Federal Trade Commission (FTC), Bureau of Consumer Financial Protection, commonly known as the Consumer Financial Protection Bureau (CFPB), and Securities and Exchange Commission (SEC) may have consumer protection and investor oversight roles or other responsibilities related to pension advances depending on a number of factors, including whether the transaction involves consumer financial products and services, other consumer products or services, or investment products; or depending on the provider of the service. The Department of Labor's (DOL) Employee Benefits Security Administration (EBSA), Department of the Treasury (Treasury), Pension Benefit Guaranty Corporation (PBGC), Office of Personnel Management (OPM), and Departments of Defense (DOD) and Veterans Affairs (VA) may also have pension oversight roles depending on whether the pensioner was a private-sector employee, a federal government civilian worker (hereafter referred to as a federal pensioner), or a military veteran.[3]

You asked us to examine entities marketing these financial products and to provide case-study examples of the practices that are used, and to review federal and state laws and regulations that may be applicable. This report (1) describes the number and characteristics of entities offering pension advances and the marketing practices that pension advance companies employ, (2) evaluates how pension advance terms compare with those of other financial products, and (3) evaluates the

[2]MetLife Mature Market Institute et al., *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation against America's Elders*, (New York, NY: 2011). This estimate is based on a study of media reports from April to June 2010. Also, see GAO, *Elder Justice: Federal Government Has Taken Some Steps but Could Do More to Combat Elder Financial Exploitation*, GAO-13-626T (Washington, D.C.: May 16, 2013) for examples of forms of elder financial exploitation. Elder financial exploitation is the illegal or improper use of an older adult's funds, property, or assets. Perpetrators may be family members; paid home care workers; financial advisors or legal guardians; or strangers who inundate older adults with mail, telephone, or Internet scams.

[3]Treasury's Internal Revenue Service (IRS) has an oversight role over private-sector pensions. IRS also has certain oversight roles over governmental plans other than antiassignment provisions. The term governmental plan includes any plan that is established and maintained by a state or local government for its employees as well as any plan that is specified under 26 U.S.C. § 414(d).

extent to which there are federal oversight mechanisms in place related to pension advances.[4]

To describe the number and characteristics of entities offering pension advances and the marketing practices that pension advance companies employ, we identified companies that offer pension advances by performing a comprehensive search of companies that market these products to consumers online, reviewing newspaper and magazine articles, conducting queries of federal and public databases that capture information on companies, and interviewing officials from agencies and organizations that provide information to and collect information from retired consumers.[5] Pension advance transactions have two major components: the up-front lump-sum payment provided to consumers in exchange for a certain number (and dollar amount) of the consumer's future pension payments (known as the pension advance) and the pension stream payments provided to investors in exchange for providing the lump sum (known as the pension investment).[6] For purposes of this report, we focused more on the pension advance component than on the

[4]Because the pension advances described in this report are based on future pension payments of a specified amount, they are limited to defined-benefit pensions. Defined-benefit plans generally maintain a fund to provide a fixed level of monthly retirement income based on a formula specified in the plan. For purposes of this review, we consider pensions to be the defined benefits typically accepted by pension advance companies as a payment stream for providing an up-front lump sum. These defined-benefit streams include those provided to private-sector retirees through employer-sponsored defined-benefit plans, including plans that have been terminated and are being administered by PBGC, as well as those provided to federal retirees through the Civil Service Retirement System and Federal Employee Retirement System, and to military retirees and veterans through DOD retirement pensions. Although VA does not administer the same kind of defined-benefit pension, we also include its needs-based benefit program for veterans and their survivors that is called a "pension" in our definition of pension in this report.

[5]For purposes of this review, we consider pension advance companies to be entities offering pension advances or an up-front lump-sum payment to consumers in exchange for a certain number of (or an amount equivalent to) future pension payments plus various fees. Also, for purposes of this review, the term "pension advance" does not refer to lump-sum payment options offered directly by pension plans.

[6]For the purposes of this report, we are using the terms "pension advance" and "pension investment" to refer to the two types of products that can be marketed in a pension advance transaction. First, there is the pension advance that is marketed in a transaction between the pension advance company and a pensioner to sell a part of his or her pension benefit for a specific period in return for a lump sum. Second, there is the pension investment that is marketed in a transaction between the pension advance company and potential investors to invest a lump sum of money to receive a stream of income derived from a pensioner for a specific period.

pension investment component in order to highlight the direct effect on pensioners. For the 38 companies that we identified as having offered pension advance products, we obtained demographic information using public and nonpublic data.[7] We also obtained additional data on 19 of the 38 pension advance companies selected for case studies, which we use for illustrative examples in this report. These 19 companies were selected based on factors such as varying types of marketing claims, presence of or lack of consumer complaints, and varying size of business.[8] For these 19 selected companies, we conducted undercover investigative phone calls, submitted online quote requests for pension advances, or obtained documentation directly from the companies. Posing as a federal, military, or private-sector retiree receiving a pension, our undercover investigator solicited information about the companies and their pension advance products directly from the companies. Though not generalizable to all pension advance companies, this information provided insights into a variety of pension advance transactions. To describe the marketing practices that pension advance companies employ, we reviewed information provided by the 38 companies that we identified as offering pension advances, including the terms and agreements and the structure of the transactions that they marketed publicly. For the 19 case-study companies, we also obtained additional information during our undercover investigative phone calls, follow-up online quote requests for pension advances, or subsequent documentation that the companies provided on the terms of their pension advance offers.

[7] The 38 companies that we identified and reviewed either currently or have recently offered pension advance products within the last 2 years. We describe this group of companies throughout the report. However, our list of pension advance companies may not capture all companies that exist. Some companies may exist that do not market through the Internet or publications that we reviewed or that do not have documented complaints or register with any of the sources to which we have access. However, we believe that our population effectively describes the minimum level of variation or similarities in pension advance companies and transactions. In addition, as we describe later in this report, some companies included in this total are affiliated with each other. Therefore, the number 38 reflects the number of companies that we identified that present themselves to consumers as separate companies.

[8] We were only able to determine the size of 8 out of 38 companies due to limited information on this characteristic in public and nonpublic databases or on the companies' own websites that we reviewed. Of the 19 companies selected for case studies, 4 companies had consumer complaints and 15 companies had no complaints identified on the basis of our preliminary research for case-study selection.

To evaluate how pension advance terms compare with those of other financial products, for the six companies that provided written quotes to our undercover investigator, we conducted an actuarial analysis of the lump-sum pension advance that we were offered to determine how the pension advance products compare with certain other financial products. For purposes of this report, we considered comparable financial "products" to be loans and lump-sum payment options provided directly by pension plans, as each of these products or offerings have characteristics similar to those of pension advances, such as providing a sum of money and effectively charging interest, or providing a sum of money in exchange for pension plan payments.[9]

To evaluate the extent to which there are federal oversight mechanisms in place related to pension advances, we reviewed criteria from relevant laws and regulations and met with federal and state agencies that have oversight over consumer-protection regulations, financial transactions, and marketing and sales-practice regulations such as CFPB, FTC, and the SEC, as well as members from the North American Securities Administrators Association. We also met with federal agencies that have pension oversight roles such as EBSA, Treasury, PBGC, OPM, DOD, and VA. In addition, we met with advocacy organizations associated with the retired population. We used this information to examine the extent to which federal agencies have undertaken actions to monitor or assess pension advance products' relevance to federal laws and regulations, or provide consumer-education outreach, training, or other oversight efforts.

We conducted this performance audit from August 2013 to June 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our

[9]We considered consumer loans and lump-sum payments offered by pension plan sponsors to be comparable products for purposes of this report. In general, a loan can be defined as money advanced to a borrower, to be repaid at a later date, usually with interest. A loan contract specifies the terms and conditions of the repayment, including the finance charge or interest rate. A lump-sum payment may be offered by certain pension plan sponsors in exchange for an ongoing pension payment. We did not determine whether the pension advances were consumer loans for purposes of the usury laws, whether the pensioner could qualify for lower-interest-rate products, or whether the pensioners were eligible for lump-sum payments from pension plan sponsors. We recognize that there are other consumer financial products that may also be comparable, such as credit cards and other consumer credit products. For purposes of this report, we focus on the two financial products that we believe are most comparable.

findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted our related investigative work from September 2013 to June 2014 in accordance with the standards prescribed by the Council of the Inspectors General on Integrity and Efficiency. For a more-detailed description of our scope and methodology, see appendix I.

Background

Pension-Based Products

Pension advances and pension investments are products that, while based on or related to pension benefits, are generally distinct from the pensions themselves. A pension advance is an up-front lump sum provided to a consumer in exchange for a certain number and dollar amount of the consumer's future pension payments plus various fees.[10] Pension investments, the related product, provide investors a future income stream when they make an up-front lump-sum investment in one or more pensioners' incomes.

Multiple parties can be involved in pension advance transactions, including consumers and investors. A pension advance transaction is generally initiated by a pensioner who contacts a pension advance company by telephone, or through an online form. The pensioner provides personal information to the company, including proof of pension payments and the monthly amount the pensioner is currently receiving. After the company collects this information, it may provide one or more quotes to the pensioner, which include estimated monthly amounts that the pensioner is to pay and the lump sum the pensioner will receive. The pensioner may need to provide additional information or documentation that the pension advance company uses to further evaluate the pensioner. Companies perform these evaluations, or underwriting functions, either internally or use an external company. If the company approves the pensioner, it will extend an offer and provide a contract to the pensioner. To move funds among the parties, either the pensioner or the pension advance company may set up a bank account or an escrow

[10]Pension advance companies' fees could be deducted from the up-front lump sum paid to the pensioner.

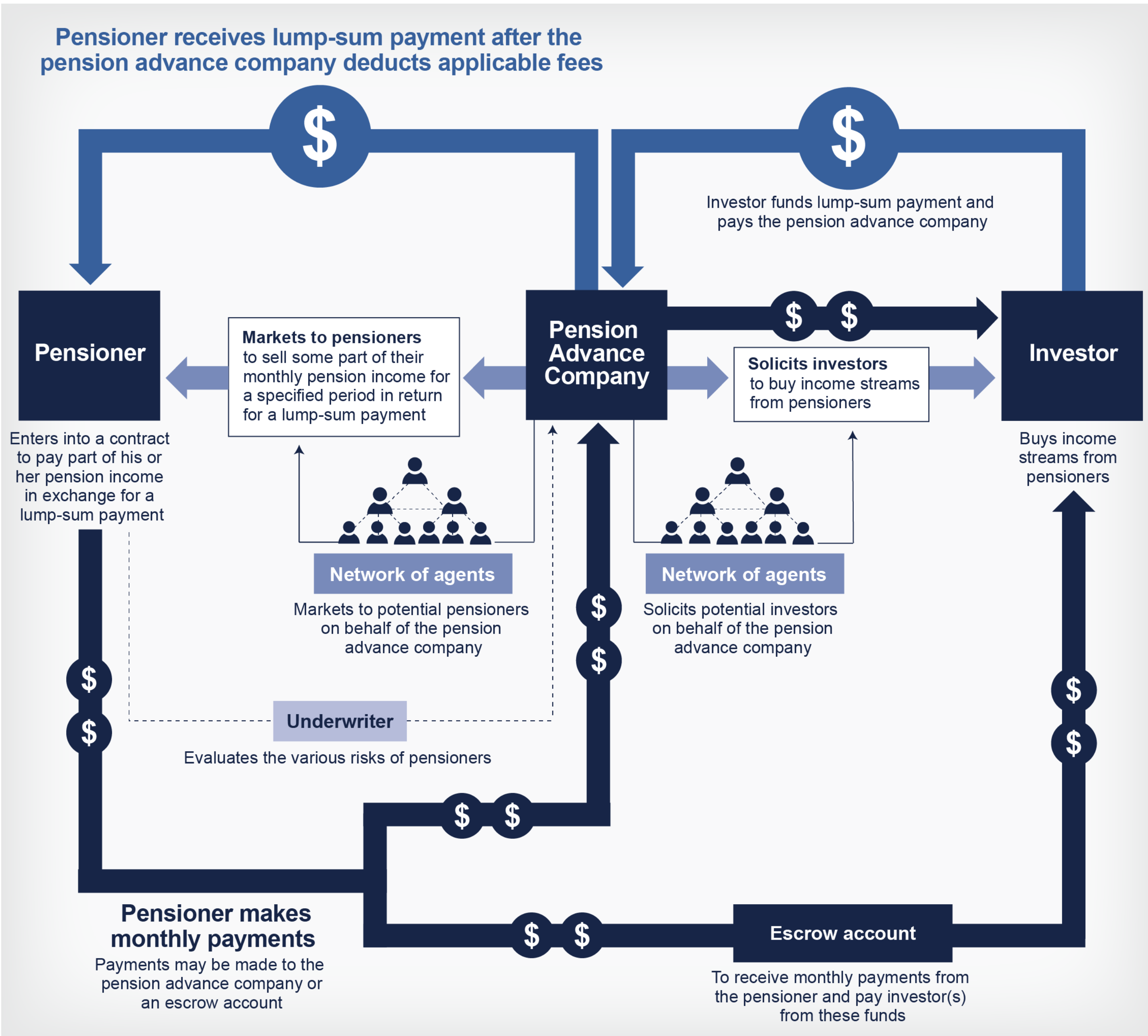
account in which the pensioner deposits the future monthly payments and from which the pensioner may receive the lump-sum amount.[11] A company may also require that the pensioner maintain a life-insurance policy to cover the outstanding balance in the event the pensioner dies before all payments are made.[12] After the pensioner signs the contract, the pension advance company gives the lump sum to the pensioner after deducting, if applicable, life-insurance premiums or other fees from the lump sum.

Pension advance companies may also be involved in the related pension investment transaction. These companies can identify financing sources (investors) to provide the lump-sum monies to a specific pensioner or to multiple pensioners. The investor pays the lump-sum amount by depositing the funds into the bank or escrow account that was previously established, as discussed above. The investor receives periodic payments, such as on a monthly basis, over the agreed-upon period either from the pension advance company or through the escrow account. See figure 1 for an illustration of the parties that we identified in the multistep pension advance processes that we reviewed.

[11]A company may ask the pensioner to arrange an automated clearing house transaction with the bank to make the future monthly deposits.

[12]The pensioner can use an existing life-insurance policy or the pension advance company can provide assistance to the pensioner in obtaining a new policy.

Figure 1: Parties Involved in the Multistep Pension Advance Processes That GAO Reviewed



Source: GAO.

Federal Laws, Regulations, and Oversight Roles and Responsibilities

Various federal laws could potentially apply to pension advances, depending on the structure of the product and transaction, among other things. For example, certain provisions that prohibit the assignment of benefits could apply to pension advances, depending on whether these advances involve directly transferring all or part of the pension benefit to a third party.[13] Applicable federal laws regarding the assignment of pension benefits include the Employee Retirement Income Security Act of 1974 (ERISA); Title 26 of the United States Code (Internal Revenue Code) governing the tax treatment of retirement and disability plans and payments; Title 5 of the United States Code governing Civil Service Retirement funds; Title 37 of the United States Code governing military members' retirement pay; Title 38 of the United States Code governing certain military veterans' disability pay; and the Railroad Retirement Act of 1974.[14] Depending on the structure of the pension advance product and transaction, other applicable laws could include the Truth in Lending Act (TILA), federal securities laws such as the Securities Act of 1933 (1933 Act) and the Securities Exchange Act of 1934 (1934 Act), provisions on financial education in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), and prohibitions on unfair or deceptive acts or practices contained in the Federal Trade Commission Act (FTC Act) and the Dodd-Frank Act.[15]

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[13]Federal laws regarding pension benefits use terms such as assignment, alienation, and allotment. *Black's Law Dictionary* defines "assignment" as the act by which one person transfers to another, or causes to vest in that other, the whole of the right, interest, or property which he has in any realty or personalty, in possession or in action, or any share, interest, or subsidiary estate therein; "alienation" as giving another party a pension or retirement plan benefits; and "allot" to mean to apportion, to distribute, to divide property previously held in common among those entitled, assigning to each his ratable portion, to be held in severalty, or to set apart specific property, a share of a fund, etc., to a distinct party. For purposes of this report, we use the term "assignment" to also refer to the related terms "alienation" and "allotment." Traditionally, the assignment of a pension has been understood to refer to a substitution of the direct recipient of the pension payments.

[14]29 U.S.C. § 1056(d); 26 U.S.C. § 401(a)(13), which provides that retirement plan benefits generally may not be assigned or alienated, does not apply to any governmental plan (within the meaning of 26 U.S.C. § 414(d)); 5 U.S.C. §§ 8345(h), 8465(b); 5 C.F.R. § 831.1511; 37 U.S.C. § 701; 38 U.S.C. § 5301(a); and 45 U.S.C. § 231m(a). Also, IRS regulations provide a limited exception for arrangements whereby a participant directs the plan to pay benefits to a third party if: (1) it is revocable at any time; and (2) the third party files a written acknowledgement with the plan that it has no enforceable right to any plan benefit payment. 26 C.F.R. § 1.401(a)-13(e).

[15]15 U.S.C. § 1605 et seq.; 15 U.S.C. § 78a et seq.; 12 U.S.C. § 5493(d); 15 U.S.C. § 41 et seq.;15 U.S.C. § 45; and 12 U.S.C. § 5531.

Various federal agencies have oversight roles and responsibilities related to consumer and investor issues. CFPB, FTC, and the SEC may have consumer and investor-related oversight roles related to pension advance transactions depending on a number of factors, including the structure of the pension advance product and transaction.

As previously noted, pension advance transactions typically have two sides of the transaction: (1) pension advances and (2) pension investments. CFPB or FTC could have oversight roles over the transactions, depending on the structure of the pension advance product and transaction.[16] The SEC and the Financial Industry Regulatory Authority (FINRA) could have oversight roles over pension advance transactions if the transactions are in connection with the purchase or sale of a security, or if the transaction is recommended by an investment adviser.[17]

Regardless of whether certain pension advance products fall outside the scope of pension antiassignment provisions or TILA, the products themselves or the way in which the products are marketed, offered, and sold could be unfair, deceptive, or abusive.[18] The Dodd-Frank Act gives CFPB broad oversight authority over consumer financial products and services, as well as enforcement and rulemaking authority to prevent unfair, deceptive, and abusive practices in connection with such products and services, and authority to take actions against violators and to

[16]For purposes of this report, we use the term oversight to include supervisory, regulatory, and enforcement functions.

[17]At the federal level, the U.S. securities markets are subject to a combination of industry self-regulation (with the SEC's oversight) and direct SEC regulation. This regulatory scheme gives self-regulatory organizations, such as FINRA and national securities exchanges, certain responsibilities for oversight of the securities market and broker-dealers under their jurisdiction. FINRA is involved in various aspects of the securities business, including registering and educating industry participants; examining securities firms; writing and enforcing rules; informing and educating the investing public; providing trade reporting and other industry utilities; and administering a dispute-resolution forum for investors and registered firms. The SEC oversees these self-regulatory organizations to ensure that they are carrying out their regulatory responsibilities.

[18]Provisions prohibiting certain acts or practices may apply if an act or practice is considered: unfair (causes or is likely to cause a consumer reasonably unavoidable substantial injury); abusive (takes unreasonable advantage of a consumer's lack of understanding regarding a product's or service's material risks, costs, terms, or conditions); or deceptive (are misleading, including false representations or misleading price claims, among other things).

educate consumers about ways to protect themselves against such practices.[19] Similarly, FTC has authority to investigate and prosecute unfair or deceptive acts or practices under Section 5 of the FTC Act.[20] Additional details about the Dodd-Frank Act and FTC Act are provided later in this report.

Many other federal agencies may have pension oversight roles related to the pension itself depending on whether the pensioner was a private-sector or federal employee or a military veteran: EBSA, Treasury, and PBGC have oversight over private-sector pensions; OPM has oversight of federal civilian pensions; DOD has oversight over military pensions; and VA has oversight over a needs-based benefit program called a "pension."[21] The oversight authority that agencies have includes communicating with retirees about matters that affect their pensions.

State Laws, Regulations, and Enforcement

Certain state laws and regulations could also potentially apply to pension advances depending on the way they are marketed, offered, and sold.

[19]According to section 1031 of the Dodd-Frank Act, CFPB may take an enforcement action to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. § 5531. CFPB has the authority to enforce rules prescribed under the FTC Act with respect to an unfair or deceptive act or practice to the extent that such rule applied to an entity under CFPB jurisdiction with respect to the offer or sale of a consumer financial product or service. 12 U.S.C. § 5581(b)(5)(B)(ii).

[20]Under the FTC Act, FTC is empowered, among other things, to (1) prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce; (2) seek equitable relief for conduct injurious to consumers; (3) prescribe trade regulation rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; (4) conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and (5) make reports and legislative recommendations to Congress. 15 U.S.C. § 45 et. seq. FTC also has the authority to enforce rules prescribed by CFPB with respect to entities subject to FTC jurisdiction. 12 U.S.C. § 5581(b)(5)(C)(ii). Certain entities, including banks, are excluded from FTC jurisdiction. 15 U.S.C. § 45(a).

[21]As previously described, Treasury also has oversight over certain provisions related to state and local government pensions, which we do not discuss in the scope of this report. Also, VA provides tax-free supplemental income, commonly referred to as VA pension, or non-service-connected pension, to some low-income wartime veterans who meet certain service, income, and net-worth limits set by law—or people who are surviving family members of veterans who meet the criteria.

For example, potentially applicable state laws include each state's consumer protection laws such as those governing Unfair and Deceptive Acts and Practices (UDAP) and usury laws that specify the maximum legal interest rate that can be charged on a loan.[22] At the state level, every state has a consumer protection law known as a UDAP law that prohibits unfair and deceptive practices in order to protect consumers, among other relevant state laws. Depending on the overall structure of the products involved, state securities laws could also apply.[23] State securities regulators administer state securities laws and regulations.[24]

During our review, we also identified relevant state investigations and legal cases. For example, in 2013, the states of New York and Massachusetts launched investigations to examine pension advance companies.[25] According to the regulators from these states, these investigations were still under way as of April 2014. In addition to these states' investigations, there have also been lawsuits filed on behalf of military pensioners and veterans against pension advance companies and affiliates. These lawsuits include class action cases in California and Georgia. Further, the Arkansas Securities Department has conducted an

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[22]Most states have usury statutes, which are regulations governing the amount of interest that can be charged on a loan. These laws specifically target the practice of charging excessively high rates on loans by setting caps on the maximum amount of interest that can be levied. These laws are designed to protect consumers.

[23]For state law purposes, whether pension sales products constitute securities depends on the definition of a security under a particular state's securities laws.

[24]Every state has its own securities laws, commonly known as "Blue Sky Laws," that are designed to protect investors against fraudulent sales practices and activities. These laws vary from state to state, but typically require registration of offerings before they can be sold in a particular state, as well as licensing of brokerage firms, their brokers, and investment adviser representatives.

[25]In May 2013, the New York Department of Financial Services launched an investigation into pension advances and sent subpoenas to 10 companies engaging in pension advances. According to its press release, the department's investigation is targeted at determining whether these companies have engaged in fraud or misconduct; violated state usury laws; engaged in false, misleading, or deceptive advertising about rates and fees; or violated laws prohibiting the harvesting of military pensions. Also in May 2013, the Massachusetts Securities Division opened an investigation into companies that seek to purchase settlement income streams including pensions of military retirees. As part of this investigation, inquiry letters were sent to nine companies seeking information on whether the company does business in Massachusetts; how and by whom it is marketed; whether residents have been contacted; as well as information needed to determine if the future income streams have been securitized.

investigation that resulted in the Commissioner issuing two Cease and Desist Orders against a pension advance company in April 2013 and March 2014.

A Number of Geographically Concentrated and Affiliated Companies Are Involved in Pension Advances and Market to Financially Vulnerable Consumers Nationwide

The pension advance transactions we reviewed involved a number of geographically concentrated and affiliated companies in the multistep process that we previously described (see fig. 1 for an illustration of the parties that we identified in the multistep pension advance processes that we reviewed). We found that the majority of the 38 companies we identified were affiliated with each other in ways that were not apparent to consumers. Also, the companies that we identified operated primarily as web-based companies, and most marketed to consumers in need of cash or with poor or bad credit nationwide.

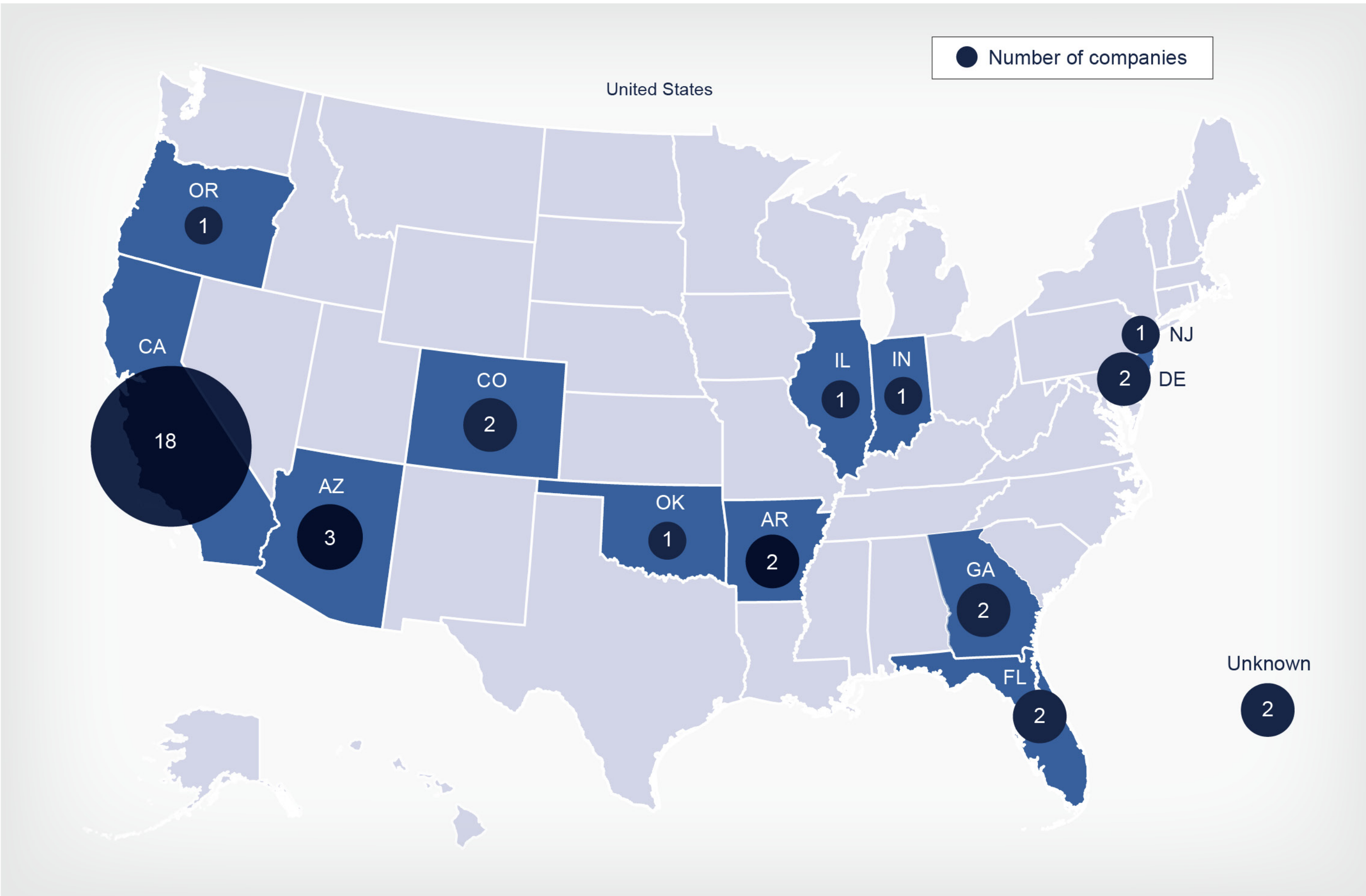
About Half of Pension Advance Companies We Identified Were Geographically Concentrated in One State and Offered a Range of Financial Products

We identified at least 38 companies that offered lump-sum advance products in exchange for pension payment streams.[26] (App. II provides summary information on the 38 companies that we identified.) Eighteen of the 38 companies we identified were concentrated in one state, California, and 17 offered a range of financial products in addition to pension advances. See figure 2 for the physical locations of companies that we identified.[27]

[26]The 38 companies that we identified and reviewed either currently or have recently offered pension advance products within the last 2 years. These companies were identified during our audit and are not an all-inclusive list of companies offering pension advance products. Also, these are not necessarily companies that are independent of one another. We discuss affiliations between some of these companies later in this report.

[27]For purposes of this report, the company location listed in the graphic is based on: the address provided by the company on its website; Accurint, Dun & Bradstreet, and Better Business Bureau reports, if available; or legal information provided by the company. Although almost half of the 38 companies that we identified were located in California, we found that most of the 38 companies offered services nationwide, which we further describe later in this report.

Figure 2: Locations of 38 Pension Advance Companies Identified by GAO



Source: GAO analysis of pension advance company demographics.

Note: The 38 companies that we identified and reviewed either currently or have recently offered pension advance products within the last 2 years.

In terms of the products and services that these companies offered, we found that 17 out of 38 companies did not exclusively offer pension advances, but also offered lump-sum cash advances for a wide range of income streams, including lottery winnings, insurance settlements, and inheritances. Another 17 companies exclusively focused on offering pension advances.[28]

Companies We Identified Were Affiliated with Each Other in Various Ways That Are Not Apparent to Consumers

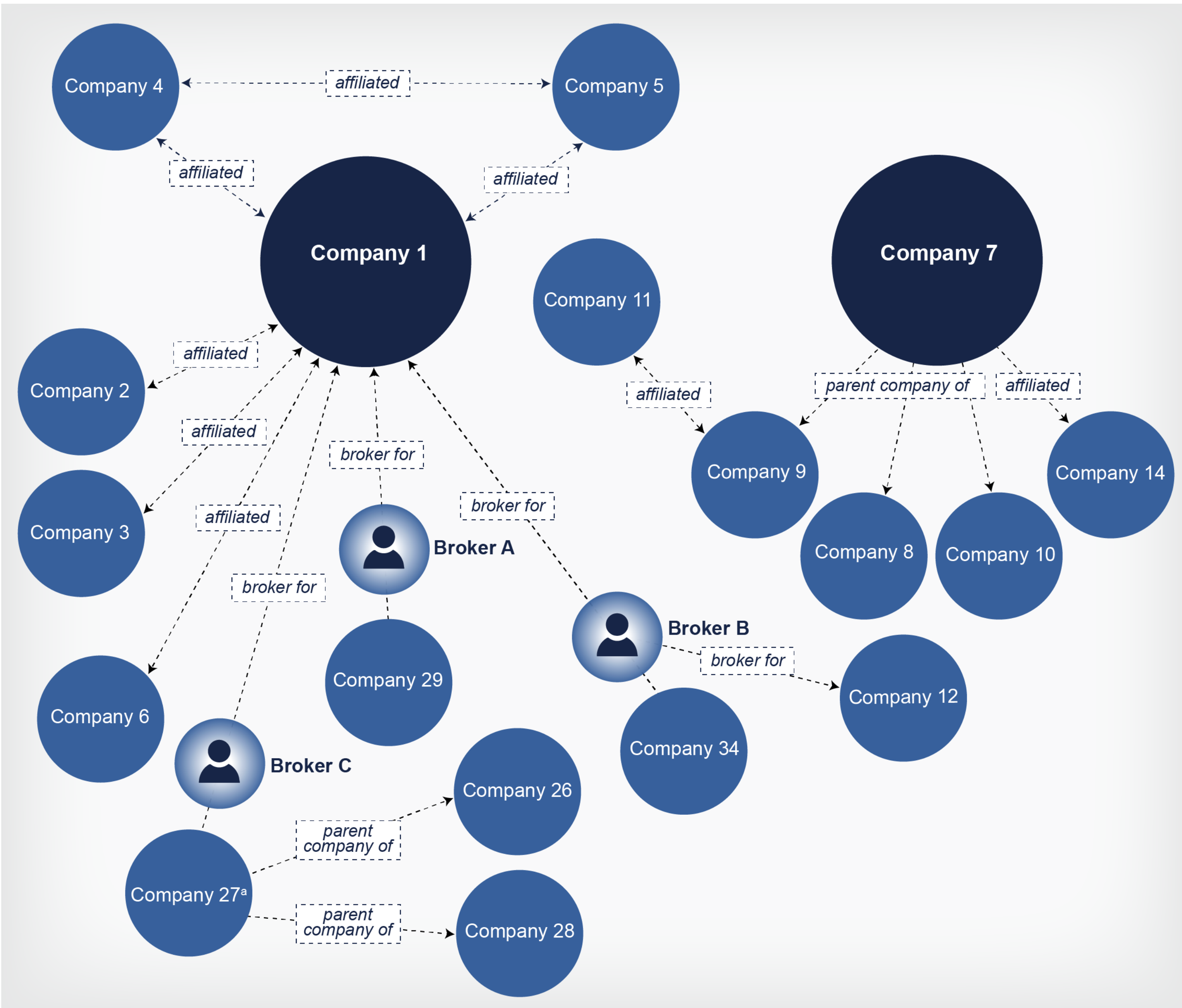
We found that at least 30 out of 38 companies that we identified had a relationship or affiliation with each other, including working as a subsidiary or broker, or the companies were the same entity operating with more than one name.[29] However, only 9 out of those 30 companies clearly disclosed these relationships to consumers on the companies' websites. While companies having affiliations is not uncommon, the lack of transparency to consumers regarding with whom they are actually conducting business can make it difficult to know whom to file a complaint against if the pensioner is dissatisfied or make it difficult to research the reputability of the company before continuing to pursue the business relationship. In some instances, we found that affiliation disclosures occur after a consumer contacts a pension advance company and are not disclosed in marketing materials provided on company websites. For example, we were able to identify relationships between 14 companies through our undercover investigative calls, online quote requests, and related e-mail responses from the companies. Similarly, in one complaint filed with FTC, a consumer complained about the lack of disclosure of these affiliations. Specifically, the consumer expressed concerns that the undisclosed relationships between nine pension advance companies on their websites were misleading. This consumer reported that he contacted Company 1 and two other companies that he determined were affiliated with Company 1. It is unclear from the complaint whether the consumer directly contacted the other six companies that he claimed were affiliated. The consumer indicated that his complaint arose after his application was turned down by Company 1 and he was told by another company that if

[28]The remaining four companies currently or recently offered pension advance products, but detailed marketing materials were not available for our review in order for us to determine whether these companies focused on offering pension advances.

[29]For purposes of this report, we use the term "affiliate" to refer to companies that have a business relationship. In our examples, we identify the specific type of affiliation between companies where it was possible for us to clearly document the specific nature of the affiliation from our audit research and investigative work. In some instances, we identified a business relationship, but the nature of the affiliation was unclear. Securities regulations define a subsidiary as an affiliate controlled by a specific person directly or indirectly through one or more intermediaries. 17 C.F.R. § 230.405. A broker is, among other things, one who acts as an intermediary or as an agent who negotiates contracts of purchase and sale.

Company 1 denied his application, there would be “no chance” at the other companies because they were owned by Company 1. It is also important to note that complaints may not be accurate or they may not represent a law violation. See figure 3 for an illustration of some of the relationships between companies that we identified.

Figure 3: Two Examples of Identified Relationships between Companies Offering Pension Advances



Source: GAO analysis of company information.

Notes: We use the term "affiliated" to refer to companies that have a business relationship. In the figure above, we identify the specific type of affiliation between companies where it was possible for us to clearly document the specific nature of the affiliation from our audit research and investigative work. In some instances, we identified a business relationship, but the nature of the affiliation was unclear. Also, on the basis of our analysis of pension advance companies, there were other related companies. However, the specific relationships between these other companies are unclear and therefore are not presented in the figure above.

[a]This company was formerly known by a different name.

As highlighted in figure 3, during our audit and undercover investigative work we found evidence that several companies were operating as subsidiaries of a larger company.

- For example, Company 8, Company 9, and Company 10, operated as subsidiaries of Company 7. We were not able to identify a current online presence for Company 7. However, as part of our undercover investigative phone calls, we contacted Company 8, Company 9, and Company 10 and received an e-mail from one of these companies signed by Company 7. Also, during our call with one of those three companies, the representative stated that Company 7 is its parent company. In addition, on their websites, Company 8, Company 9, and Company 10 list the same mailing address. As highlighted in the examples in figure 3, Company 7 is one of the two primary entities we identified as offering pension advance products to consumers.

On the basis of our undercover investigative phone calls and online quote requests to pension advance companies, we identified four instances of companies that operated as brokers for other companies.

- In one instance, we separately contacted both Company 27 and Company 34, and in both instances received a quote by either e-mail or mail from Company 1. These companies did not publicly disclose having a relationship to each other, and maintained separate online presences. However, in the quote documentation we obtained from Company 1, representatives from Company 27 and Company 34 were specifically named as its brokers.

- In another instance, after submitting an online quote request to Company 29, we received a response from that company that contained the logo for Company 1.

- In a third instance, which is not depicted in figure 3, we received e-mails from a representative of Company 17 in response to online quote requests separately submitted to various other companies, including Company 19, Company 20, and Company 25. Also, after submitting an online quote request to Company 21, we received a response that the representative from Company 17 would contact us with a quote.

A company representative describing pension advance company affiliations

Company Representative: “As you go to … their web sites … they’re all going to be the same company pretty much. There’s only a couple of companies that do this.”

GAO Undercover Investigator: “Oh, okay. Okay. Because I saw a lot of different names.”

Company Representative: “Right … probably 80 percent of all the pensions that get sold in this country … are through us. There’s a couple other companies out there.”

Source: GAO investigative call to a pension advance company.

Note: View clip on relationships among pension advance companies.

- In a fourth instance, a separate company representative that we spoke with told us that, although there are many companies with websites, most pension advances are ultimately provided through just a few companies. His comments indicate that many companies could constitute a network of brokers for a few larger companies. (See the sidebar for the direct quote from this representative.) We also heard similar comments from another company representative that we spoke with during our undercover investigative phone calls.

We also identified one company that changed the corporate name that it operated under following legal actions. This company began operating around 1996. In 2005, a class-action lawsuit was filed against that company and its principals for damage restitution, unjust enrichment, and declaratory and injunctive relief. In 2011, the court decided that the plaintiff and class were entitled to restitution in the sum of almost $3 million.[30] Around the time that company filed for bankruptcy in 2012, Company 1 was created under the presidency of one of the executives. As highlighted in figure 3, the company continues to offer pension advances under the name of Company 1 and its affiliates and brokers.

Companies Marketed Products Nationally to Consumers in Need of Quick Cash or with Poor or Bad Credit

At least 34 out of 38 pension advance companies that we identified marketed and offered their services to customers nationwide, operating primarily as web-based companies and marketing through websites and other social-media outlets.[31] Although almost half of the 38 companies that we identified were located in California, we found that most of the 38 companies offered services nationwide. Specifically, the company marketing materials we reviewed did not require customers to come to the company’s establishment to complete the pension advance transaction or reside in the same state from which the company was offering services. None of the companies that we spoke with during our

[30]The court decision did not direct the company not to engage in pension advances in the future.

[31]Thirty-six of the 38 companies that we identified had websites, 23 of which provided full online applications for lump-sum pension advances and 7 of which requested contact information only; the remaining companies did not request any information. The other two companies did not have an Internet presence at the time of our review. Although most companies did have websites that would allow them to reach pensioners nationwide, during our undercover investigative calls and review of company websites we identified up to five companies that stated that they do not accept clients either from the states of New York, Arkansas, Massachusetts, Iowa, or Missouri.

undercover investigative calls required that we reside in the location in which they were incorporated or established to conduct business.

Marketing claims featured on a company's website

"Nowhere else can you leverage your federal or PBGC-backed retirement income by exchanging a future trickle of income for cold, hard cash in your hands today. You've worked hard to earn your money, shouldn't you have control over it?"

Source: A pension advance company.

Note: PBGC is the Pension Benefit Guaranty Corporation.

Twenty-eight of the 38 companies that we identified used marketing materials or sales pitches designed to target consumers in need of cash to address an urgent need such as paying off credit card debts, tuition costs, or medicals bills, or appealed to consumers' desire to have quick access to the cash value of the pension that they have earned. For example, during a phone call with Company 9, the representative marketed her company by stating that her company is the easiest and the quickest to deal with. This theme was also marketed through the companies' websites. Additionally, Company 15 marketed its pension advance product specifically to retirees with federally backed pensions and PBGC-backed pensions, claiming that the pensioner would receive cash quickly. (See the sidebar for an example of one company's marketing on its website.)

A company representative describing the credit scores and needs of typical potential customers

"Most of the people that call, they … have in 4- and 500 score … which typically it's because they are struggling and they need this money."

Source: GAO investigative call to a pension advance company.

Note: View clip on credit scores and needs of typical potential pension advance customers.

Eleven of the 38 companies that we identified used marketing materials or sales pitches designed to target consumers with poor or bad credit. These 11 companies encouraged those with poor credit to apply, stating that poor or bad credit was not a disqualifying factor. Some of these companies specifically stated on their website that pensioners "with poor credit, judgments, past bankruptcies, or other blemishes" are encouraged to apply. We also observed this type of marketing during our undercover investigative phone calls. For example, a representative from one company stated that the company uses a credit report to determine the maximum lump sum that it can provide to the pensioner, and the company will provide several options, stating that no application would likely be declined. In another example, a representative from Company 30 noted that people who call regarding obtaining a pension advance generally have what is considered bad credit, with scores in the 400s and 500s. This representative pointed out that pensioners typically are interested in pension advances because of a financial need. (See the sidebar for the direct quote from this representative.)

Two company representatives describing how pension advances compare with bank loans

"[I]f you could go to the bank and do it, you would do better off, but if you can't this is an option."

"[I]f you have access to, like, a bank loan or being able to borrow money from a source that you would be paying back much less … I always recommend that first, because this is your retirement money that you're using. It can be comparable to, like, a high interest credit card. If you don't have any other options or you don't need the monthly income and you're just wanting to use it for this reason, then of course we want to help you any way we can."

Source: GAO investigative calls to select pension advance companies.

Note: View clip on comparing pension advances with bank loans.

During our undercover investigative phone calls, we observed that 2 of the 19 companies were transparent about the less than favorable terms that the companies offered. For example, one company representative told our undercover investigator that it would be "better" to go to a bank, but advised us that if we could not go through a bank, his company was an option. Another company told our undercover investigator that we would be paying back much less if we went through a bank, but if we did not have any other option then this pension advance would be a way to secure upfront cash. (See the sidebar for the direct quotes from these representatives.)

We found that 24 out of 38 companies marketed products to retirees for a range of pensions, including private-sector, military, or government pensions.[32] For example, accepted pensions for the companies we reviewed typically included private, corporate, federal, city, state, teacher, union, military, VA disability, and others. Two companies especially targeted military pensions in that the titles of the companies included either the terms "veterans" or "retired military" and their websites showed a uniform and displayed an American flag. Also, one of these websites included an online shop where one could purchase patriotic merchandise. The other 22 companies did not especially target any particular pension type in their marketing materials. Ten of the 38 companies specifically stated on their websites that they accepted VA disability pensions. However, there were some exceptions noted for the types of pensions that a pension advance company would accept. During our undercover investigative phone calls to 19 companies, one company told us it did not accept government pensions. On pension advance companies' websites, 19 of the 38 companies stated that they did not accept Social Security income, 9 companies stated that they did not accept VA disability benefits, and 1 company specifically stated that it could not accept military pensions.

[32]We were unable to determine whether 10 companies marketed products to retirees for a range of pensions because these companies did not specify what kind of pensions they deal with in the materials that we reviewed. The remaining four companies currently or recently offered pension advance products, but detailed marketing materials were not available for our review in order for us to determine whether these companies marketed products to retirees for a range of pensions.

A company representative marketing pension advances to investors

"[W]e offer three safe income strategies that are focused on keeping your money safe, paying more than bank [certificates of deposit], money markets, and Treasuries, and doing so without the downside risk and volatility of stocks, bonds, and mutual funds."

"[T]hese strategies work. During the financial market meltdown of 2008, none of our clients lost money due to market volatility. Their money was safe and secure and their income was steady and reliable."

Source: GAO investigative call to a pension advance company.

Note: View clip on marketing pension advances to investors.

We also found that 5 out of 38 companies marketed to individuals or companies to invest in pension advance funding, at times, through questionable means. For example, two of these companies compared the return on their investment products with other investment products, such as immediate annuities, certificates of deposit, and bonds. In an outgoing voicemail that we heard during our undercover investigative phone calls, one company specifically stated it offered three safe income strategies that are focused on keeping investors' money safe, advertising that it paid more than bank certificates of deposit, money market accounts, and Treasury securities, without the downside risk and volatility of stocks, bonds, and mutual funds. (See the sidebar for a direct quote from this outgoing voicemail message.) However, an investor bulletin issued by the SEC and FINRA highlighted that there are several complex risks associated with investing in pension advances, which we observed that the companies do not completely describe.[33] The risks described in the SEC and FINRA bulletin included: that pension advances are not likely registered with the SEC, which limits reliable information about the products and ability to resolve disputes if necessary; the potential difficulty reselling the product if needed; and potential legal challenges to the investor's "rights" to the income stream that they purchased; among other things. In addition, officials from the PBGC Office of Inspector General told us that a financial advisor, who they identified as acting as a broker, agent, or middleman for a pension sale, fraudulently stated that these pensions were made available for sale by PBGC. Such claims could lead investors to think that these investments are backed by the federal government or PBGC, which is untrue.[34]

[33]As discussed later in this report, the SEC and FINRA coordinated together to issue an Investor Bulletin warning consumers about pension or settlement income streams.

[34]In its fall 2013 newsletter to retirees, PBGC reported that its Office of Inspector General warns that individuals are "peddling fraudulent investments in pension incomes supposedly backed by PBGC." The PBGC Office of Inspector General specifically cited one instance in which a financial advisor claimed that PBGC benefit recipients had sold their pension incomes for a lump sum, and that the benefits, still backed by PBGC, were made available for sale by PBGC. In this alert, PBGC Office of Inspector General reported that this financial advisor further claimed the investments had a guaranteed rate of return of more than 6 percent.

The Six Pension Advance Companies That Provided GAO Quotes Offered Unfavorable Terms Compared with Other Financial Products

Pension Advance Terms Were Less Favorable than Comparable Regulated Interest Rates and Lump-Sum Calculations

The terms offered by six pension advance companies that provided our undercover investigator with quotes for pension advances did not compare favorably with other financial products such as loans and lump-sum payment options provided directly through pension plans.[35] We compared 99 offers provided to us by six pension advance companies in response to undercover investigative phone calls and online quote requests with those of other financial products.[36] Specifically, we compared the terms with: (1) relevant state usury rates for loans and (2) lump-sum options offered through defined-benefit pension plans.[37] During these calls, we pretended to be either a federal, private-sector, or military pensioner and, based on our analysis, were offered generally similar terms regardless of the type of employer providing the pension. As discussed below, we found that most of the six pension advance companies' lump-sum offers (1) had effective interest rates that were significantly higher than equivalent regulated interest rates, and (2) were significantly smaller than the lump-sum amounts that would have to be offered in a pension plan that provided an equivalent lump-sum option.

[35]The other 13 companies that we contacted during our undercover investigative work did not provide quotes for pension advances.

[36]We received 99 offers from six pension advance companies in response to our undercover investigative phone calls and online quote requests. We compared the terms of all of these offers to those of other financial products.

[37]We did not determine whether pension advance transactions were loans for purposes of state usury rates, whether the pensioner could qualify for lower-interest-rate products, or whether the pensioner would have been eligible for a lump-sum distribution from the pension plan sponsor.

Comparison to Usury Rates

When analyzing the effective interest rate for the pension advance offers that we received, we calculated the cost of each lump-sum quote to the annuitant as an effective interest rate.[38] As highlighted in table 1, we determined that the effective interest rate for 97 out of 99 offers provided to our undercover investigator by six companies ranged from approximately 27 percent to 46 percent.[39] Most of these interest rates were significantly higher than the legal limits set by some states on interest rates assessed for consumer credit, known as usury rates or usury ceilings. For example, in comparison to the usury rate for California of 12 percent, we determined that the quotes for lump-sum payments that we received from three pension advance companies for a resident of California had effective interest rates ranging from approximately 27 percent to 83 percent.[40] The effective interest rates on some of these offers could be even higher than the rates we calculated to the extent some pension advance companies require the pensioner to purchase life insurance, and "collaterally assign" the life-insurance policy to the company, to protect the company in the event of the pensioner's death during the term of the contract. For many of the quotes we received, it was unclear whether the pensioner would be responsible for any life-insurance premium payments.[41] See table 1 for additional examples of usury rate comparisons for states where our fictitious pensioners resided for our case studies.

[38]The effective interest rate was calculated by equating the lump sum to the amount of a loan, the monthly annuitant payment to a loan repayment amount, and the total number of monthly annuitant payments to the repayment period.

[39]In addition, one company provided us with two other offers, one with an effective interest rate of about 83 percent and one with a rate of about 90 percent. These offers were made to residents of California and Texas.

[40]The quotes that we received from these three pension advance companies included 27 different offers for varying monthly payment amounts and time frames. Twenty-six of the 27 offers had effective interest rates ranging from approximately 27 percent to 32 percent; the other offer had an effective interest rate of approximately 83 percent.

[41]According to *Black's Law Dictionary*, collateral assignment refers to assigning an asset whose ownership rights are moving only as an additional security for a loan. These rights will revert to the assignor when the loan is repaid.

Table 1: Examples of Usury Rate Comparison for Our Pension Advance Offers

State	Number of companies providing offers to fictitious residents of the state	Total number of offers made to fictitious residents of the state[a]	Usury rate of state (percent)	Effective interest rate of offers from companies (percent)[b]
California	3	27	12%	27–83%[c]
Florida	2	7	18	27–38[d]
Maryland	1	63	24	27–46[e]
Texas	2	2	18	27–90[f]

Source: GAO analysis of offers received from select pension advance companies in response to our undercover investigative online quote requests and phone calls.

Notes: GAO made undercover investigative online quote requests and phone calls using fictitious profiles of private-sector, federal, and military pensioners residing in these four states.

[a]Companies provided multiple offers to our fictitious pensioners within a single quote request response. For example, for our fictitious military pensioner residing in California, one company provided 24 different offers, another company provided 2 different offers, and the third company provided 1 offer.

[b]The results of our calculation of the effective interest rate of offers from companies are not generalizable.

[c]In its offers, the first company presented the amount of life insurance that would be needed but it is unclear whether the pensioner would need to pay this amount separately, and therefore it is unclear whether the effective interest rate of the pension advance would be higher than calculated. The second company's lump-sum offers did not deduct an amount for a life-insurance premium, and it is unclear whether the pensioner would need to pay this amount separately. Therefore, it is also unclear whether the effective interest rate of the pension advance would be higher than calculated. On the basis of the offers we received from the third company, no life insurance was required. Therefore, it appears that there would be no additional cost to the pensioner for the pension advance.

[d]In its offers, the first company stated that, at closing, two-thirds of the life-insurance coverage cost would be deducted from the offer. The other one-third of the cost would be paid by the company. On the basis of this information, the effective interest rate of the pension advance would be greater than calculated. The second company's lump-sum offers did not deduct an amount for a life-insurance premium, and it is unclear whether the pensioner would need to pay this amount separately. Therefore, it is unclear whether the effective interest rate would be higher than calculated.

[e]In its offers, the company presented the amount of life insurance that would be needed, but it is unclear whether the pensioner would need to pay the premium amounts separately, and therefore it is unclear whether the effective interest rate would be higher than calculated.

[f]On the basis of the offer we received from the first company, no life insurance was required. Therefore, it appears that there would be no additional cost to the pensioner for the pension advance transaction. In its offer, the second company stated that the investor would request that the pensioner have life insurance to "cover the deal in case of … untimely passing."

Comparison to Lump-Sum Distributions Offered through Pension Plans

We compared pension advance offers that our undercover investigator received to lump-sum options that can be offered in pension plans, where a lump sum can be elected by plan participants in lieu of monthly pension payments. The amount of such a lump-sum option of a private-sector plan must comply with Employee Retirement Income Security Act of 1974 (ERISA) and Internal Revenue Code requirements that regulate the distribution of the present value of an annuity by defining a minimum benefit amount to be paid as a lump sum if a private-sector pensioner chooses the lump-sum option.[42] We determined the minimum lump-sum amount under ERISA rules for private defined-benefit plan sponsors.[43] On the basis of our analysis of 99 pension advances we were offered by six companies, we determined that the vast majority of the offers we received (97 out of 99) were for between approximately 46 and 55 percent of the minimum lump sum that would be required under ERISA regulations. This means that if these transactions were covered under ERISA regulations, the pensioner would receive about double the lump sum that they were offered by pension advance companies.[44] Again, to the extent pension advance companies require the pensioner to pay for life insurance, the terms of the deal would be even more unfavorable than indicated by these lump sum comparisons. See table 2 for a summary of the pension advance quotes as a percentage of the minimum lump sum that would be required under ERISA. Offers varied depending on number of years and the dollar amount to be paid by the pensioner each month. See appendix I for additional information on the basis for the ERISA calculations.

[42]26 U.S.C. § 417(e). The statute also prescribes how the plans must determine the present value of future benefits. In lump-sum options offered through pension plans, the lump-sum election is typically in lieu of the plan participant's remaining lifetime of payments. Because the pension advances used for these examples are for a predetermined number of years, our calculations have been adjusted accordingly.

[43]To arrive at the ERISA lump-sum amounts, we followed the Internal Revenue Code, section 417(e), which determines, for pension plans that offer lump sums, the minimum lump-sum amounts that must be provided for the pension plan to remain tax-qualified. These lump sums vary depending on the form and amount of a participant's promised benefit, the participant's age, and the particular year and month applicable to the calculation. See app. I for additional information on our calculations.

[44]Two of the offers were more favorable with an amount of approximately 77 percent of the minimum lump sum that would be required under ERISA.

Table 2: Summary of Pension Advance Quotes as a Percentage of Minimum Lump Sum That Would Be Required under ERISA Regulations

Company	Number of offers	Range of pension advance quote as a percentage of ERISA minimum lump sum
Company 19	87[a]	46–55%[b]
Company 15	4	49–54[c]
Company 1	3[d]	54[e]
Company 27	2[f]	51[e]
Company 34	2[g]	77[h]
Company 6	1	55[i]

Source: GAO analysis of offers received from select pension advance companies in response to our undercover investigative online quote requests and phone calls.

Notes: GAO made undercover investigative online quote requests and phone calls using fictitious profiles of private-sector, federal, and military pensioners.

[a]This company provided 63 offers to a fictitious federal pensioner residing in Maryland and 24 offers to a fictitious military pensioner residing in California.

[b]In its offers, the company presented the amount of life insurance that would be needed, but it is unclear whether the pensioner would need to pay this amount separately, and therefore it is unclear whether the ultimate cost of the pension advance would be higher for the pensioner.

[c]This company provided four offers to a fictitious federal pensioner residing in Florida. In its offers, the company stated that, at closing, two-thirds of the pensioner’s life-insurance coverage cost would be deducted from the offer. The other one-third of the cost would be paid by the company. On the basis of this information, the cost of the pension advance to the pensioner would be greater than the offers presented.

[d]This company provided three offers to a fictitious federal pensioner residing in Florida.

[e]The company’s lump-sum offers did not deduct an amount for a life-insurance premium, and it is unclear whether the pensioner would need to pay this amount separately. Therefore, it is unclear whether the ultimate cost of the pension advance would be higher for the pensioner.

[f]This company provided two offers to a fictitious military pensioner residing in California.

[g]This company provided one offer to a fictitious military pensioner residing in California and one offer to a fictitious private-sector pensioner residing in Texas.

[h]On the basis of the offers we received, no life insurance is required. Therefore, it appears that there would be no additional cost to the pensioner for the pension advance.

[i]This company provided one offer to a fictitious private-sector pensioner residing in Texas. In its offer, the company stated that the investor would request that the pensioner have life insurance to “cover the deal in case of … untimely passing.”

There Is Limited Federal Oversight of Pension Advances

We identified questionable elements of pension advances, such as the lack of disclosure and certain unfavorable agreement terms; however, pension advances currently have limited federal oversight and consumer education from consumer protection agencies such as CFPB and FTC. Further, a number of federal agencies with oversight over pensions, such as EBSA, Treasury, PBGC, OPM, DOD, and VA, reported limited oversight because they have not identified many related complaints and some were just learning about these products.

Questionable Practices Related to Unregulated Transactions Pose Consumer Risks

We identified questionable practices associated with pension advances that currently have little, if any, oversight. Questionable practices that we identified included: (1) the lack of disclosure of terms and company identity as well as (2) certain unfavorable terms of agreements.

Lack of Disclosure of Terms and Company Identity

Whether certain disclosure laws apply to pension advance products depends partly on whether the product and its terms meet the definition of "credit" as set in the Truth in Lending Act (TILA). Although pension advance transactions may resemble loans because a sum of money is provided to a recipient for which the recipient agrees to return a stream of future payments, some companies explicitly stated that their product was not a loan, which, if legally accurate, could exempt them from regulations that require transparency and disclosure under TILA and usury laws. (See additional discussion concerning inconsistencies among companies on whether pension advance products are considered to be loans on page 31.) The federal TILA requires creditors to provide consumers with certain disclosures when they offer or extend consumer credit transactions so as to help consumers understand the terms of the products.[45] Also, as previously described, most states have usury statutes that set the legal limit on finance charges that may be assessed for certain types of credit.

Whether pension advances are actually loans and should be subject to relevant TILA laws is a long-standing unsettled question. In May 2003, the National Consumer Law Center (NCLC) reviewed pension advance company transactions targeting veterans' benefits and reported that, through these product offerings, pension advance companies attempt to circumvent disclosure laws that exist to help consumers make informed

[45]Whether a pension advance will be subject to TILA's requirements depends on whether it meets the definitions set out in TILA, including "creditor" and whether the credit is provided for a "consumer" purpose. In July 2011, pursuant to the Dodd-Frank Act, rulemaking, supervision, and enforcement authority for consumer protection laws were generally transferred to CFPB. This includes responsibility for implementing TILA.

decisions about the cost of credit.[46] According to NCLC, by referring to pension advance transactions as something other than loans (for example, one contract it reviewed explicitly stated that the product was not a loan, while another characterized the transaction as a purchase), NCLC asserts that pension advance companies attempt to circumvent TILA consumer protections. More recently, in its 2012 response to CFPB's request for information regarding elder financial exploitation, NCLC reported similar findings. During our own review, we observed that one pension advance company explicitly stated on its website that "in the U.S. pledging one's future pension benefits as collateral for a loan is not legal … so funding sources must structure their transactions in a strictly unsecured manor [sic]."

We also found that the costs of pension advances were not always clearly disclosed to the consumer and some companies were inconsistent about whether the product is actually a loan.[47] The questionable disclosure practices we identified included the following:

- Thirty-one out of the 38 companies we identified did not disclose to pensioners an effective interest rate or comparable terms on their websites.[48] For loans, under TILA, companies would be required to disclose an effective interest rate for the transaction.

[46]National Consumer Law Center, *In Harm's Way—At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans*, (Boston, MA: May 2003). NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country as well as publishes information on consumer credit laws and unfair and deceptive practices. The organization's attorneys have written and advocated on aspects of consumer law affecting elders and low-income people, including pension advance issues. NCLC attorneys have testified before Congress on these topics and have provided comments to federal agencies on the regulations under consumer laws that affect elders.

[47]As previously described, we reviewed information provided by 38 companies that we identified as offering pension advances, including the terms and agreements and the structure of the transactions that they marketed publicly. For 19 of these 38 companies, we also obtained additional information during our undercover investigative phone calls, follow-up online quote requests for pension advances, or subsequent documentation that the companies provided on the terms of their pension advance offers. In addition, six of these pension advance companies provided written quotes to our undercover investigator.

[48]Three companies did disclose to pensioners an effective interest rate or comparable terms on their websites. The remaining four companies currently or recently offered pension advance products, but detailed marketing materials were not available for our review in order for us to determine whether these companies disclosed an effective interest rate or comparable terms.

- We also found that some of the offers provided to us by six pension advance companies were not clearly presented.[49] Specifically, these companies provided a variety of offers based on differing number of years for the term as well as differing amounts of the monthly pension to be paid to the company. For example, one company provided a quote including 63 different offers with varying terms and monthly payment amounts to our fictitious federal pensioner residing in Maryland. We considered this volume of information to be overwhelming while not including very basic disclosures, such as the effective interest rate or an explanation of the additional costs of life insurance.

- The full amount of additional fees was not always transparently disclosed in the written quotes that six pension advance companies provided to our undercover investigator. For example, some of these quotes required life insurance for the pensioner. This, in effect, is an added fee for a pension advance if the life insurance had to be paid for by the pensioner. This type of fee would likely need to be disclosed if this were a loan under TILA. For example, for four of the eight written quotes that companies provided to our undercover investigator, we determined that the companies did not disclose whether the cost of life insurance was deducted from the lump-sum advance or whether the pensioner would need to pay this amount separately, and therefore it was not clear whether the total cost of the pension advance transaction to the pensioner would be higher than quoted. Also, in one of the eight written quotes provided to our undercover investigator, a pension advance company claimed that life insurance is paid for, at least in part, by the pension advance company. However, it was unclear how any pensioner's fees are included in the transaction.[50]

[49] As previously described, we received 99 offers from six pension advance companies in response to our undercover investigative phone calls and online quote requests.

[50] In one other written quote, the pension advance company disclosed that life insurance must be in place already. For the remaining two written quotes, the pension advance company disclosed that it did not require life insurance.

Company representatives provided differing responses regarding whether a pension advance is a loan

Example 1

Representative from Company 31: “It is not a loan to you … in the purest sense of an American loan it is not.”

GAO Undercover Investigator: “Okay. What is it?”

Company Representative: “It is an advance … it is treated differently legally.”

Example 2

Representative from Company 11:

“Oh it is going to cost you. It really does. It—you are going to pay anywhere on the first company—it is outrageous because see they don’t take any collateral, they don’t collateralize your pension. They just trust you that you are going to pay it out. What they do is they take an [automated clearing house] and once a month your money comes out of your checking account to them. So it is a high-interest loan. There is no question about it. If you go with the first company it is very high. If you go with the second company you will pay anywhere from 13 to 20 percent interest.”

Example 3

GAO Undercover Investigator: “I’m trying to find out … what you offer… is it a loan … what is it?”

Representative from Company 30: “Well, it’s kind of a—they don’t call it a loan. It’s—it’s a—it’s rated as a cash advance … depending on how you look at it, you can say it’s a loan.”

Source: GAO investigative calls to select pension advance companies.

Note: View clip on differing responses regarding whether a pension advance is a loan.

- We also found that some of the 38 companies we reviewed were not consistent in identifying whether pension advances are loans. For example, while nine companies referred to these products as a loan or “pension loan” on their websites, six of these companies stated elsewhere on their websites that these products are not loans. For example, Company 1 stated several times throughout its website that its transaction is not considered a loan. However, on one of its webpages, the company directly referred to one of its pension advance products as a pension loan. Further, two other pension advance companies even have the word “loan” in their name. In addition, during undercover investigative calls to 19 of the companies, we found examples of companies that were not consistent in identifying whether pension advances are loans. In one example, a representative from Company 31 specifically stated that its pension advance is not a loan. In another example, a representative from Company 11 that we spoke with stated that this product was a high-interest loan. He also stated that, for one of the companies he worked with, the pensioner would pay anywhere from 13 to 20 percent interest. In addition, the company’s website characterizes the product as a loan in several places. In a third example, a representative from Company 30 did not clearly disclose to our undercover investigator whether or not its pension advance was a loan, when asked. (See the sidebar for the direct quotes from these representatives.)

As previously discussed, in addition to disclosure of terms, we identified limited disclosure of company affiliations. At least 21 pension advance companies were also affiliated in a number of ways that were not apparent to consumers. These companies may be run by just a few parent companies that operate behind the scenes, which makes it unclear with whom the consumer is dealing. This lack of transparency may also affect a consumer’s ability to know whom to contact regarding any problems encountered during the transaction or which regulator to contact to file a complaint, if necessary. As previously described, on the basis of our undercover investigative phone calls and online quote requests to 19 pension advance companies, we identified instances where the company that a consumer contacts may be acting on behalf of another company that provides the pension advance service, or may be operating under multiple names. Regulators from four states that we spoke with that had knowledge of or experience with pension advance products have also observed that these companies are set up in an elusive way, deliberately designed so it is unclear who is involved.

Certain Unfavorable Terms of Agreements

The terms and agreements of pension advances that we reviewed could be unfavorable to consumers, given high effective interest rates. As previously discussed, we calculated that the lump-sum amounts offered by the six pension advance companies to our undercover investigator had effective interest rates that were at times close to two to three times higher than the comparable usury rates legally allowed in the states that these consumers resided in, and that these rates were not clearly disclosed to consumers. NCLC reported, as a result of its review of transactions targeting veterans' benefits, that pension advance companies may be violating state UDAP laws prohibiting fraudulent, unfair, or deceptive practices in the marketplace.[51] In addition, as a result of a class-action lawsuit, a state court also found the characteristics that we identified in pension advances to be unfair. For example, in a class-action suit in California, one of the plaintiffs would have had an imputed interest rate of between approximately 27 and 31 percent. While it found that the agreements at issue in that case are not loans, the court decided that the mischaracterized agreements in the transaction were "unlawful" and "unfair" under California's Unfair Competition Law. The court also found the practice to be "unscrupulous and substantially injurious to consumers."[52] In this case and another lawsuit, pensioners cited that, as a result of these usurious or unfair practices, they paid excess interest to the pension advance companies. Paying excess interest is one type of elder financial exploitation, among others. According to CFPB, elders who lose their life savings as a result of financial elder abuse usually have little or no opportunity to regain what they have lost. Another concern is that, in at least one instance, it appeared that the consumer is limited in his or her ability to challenge the legality of the pension advance agreement. For example, one contract that was submitted as an exhibit of a class-action lawsuit that we reviewed contained language requiring the participant to agree not to raise a claim or defense based on antiassignment laws.

As previously mentioned, there are federal laws and regulations in place to protect consumers from unfair, abusive, or deceptive acts that may be applicable to the questionable practices that we identified. For example, as previously described, the Dodd-Frank Act and the FTC Act contain various provisions prohibiting unfair, abusive, or deceptive acts or practices. Some of the characteristics of pension advance products and

[51]NCLC, *In Harm's Way—At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans*.

[52]*Henry v. Structured Investments Co., LLC*, No. 05CC00167, Statement of Decision on Phases 2 and 3 of Bifurcated Trial (Cal. Super. Ct., Sept. 7, 2011).

their marketing raise questions as to whether they violate these prohibitions. However, there has been no direct federal oversight or public enforcement actions to determine whether pension advance practices violate any of these prohibitions.

Limited Federal Oversight and Consumer Education Related to Pension Advances

Oversight

There is limited federal oversight related to pension advances, which may be in part because, depending on how the product is structured, different federal agencies may have jurisdiction over that particular product.[53] The Dodd-Frank Act gives CFPB broad oversight authority over consumer financial products and services, including enforcement authority to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. The act authorizes CFPB both to take actions against violators and to educate consumers about ways to protect themselves against such practices.[54] In addition, in July 2011, the Dodd-Frank Act also transferred responsibility for implementing TILA, and its consumer protection disclosure requirements, to CFPB. FTC also has authority to enforce TILA and to investigate and prosecute unfair or deceptive acts

[53]For purposes of this report, we use the term oversight to include supervisory, regulatory, and enforcement functions.

[54]According to section 1031 of the Dodd-Frank Act, CFPB may take enforcement action to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under federal law in connection with any transaction with a consumer for a consumer financial product or service or the offering of a consumer financial product or service. 12 U.S.C. § 5531. CFPB has the authority to enforce rules prescribed under the FTC Act with respect to an unfair or deceptive act or practice to the extent that such rule applied to an entity under CFPB jurisdiction with respect to the offer or sale of a consumer financial product or service. 12 U.S.C. § 5581(b)(5)(B)(ii).

under Section 5 of the FTC Act.[55] Both the Dodd-Frank Act and FTC Act describe actions that CFPB and FTC are authorized to take to protect consumers and the types of financial and commercial practices that consumers should be protected against, some of which appear to be relevant to practices that we describe in this report. However, neither agency has undertaken any direct oversight or public enforcement actions regarding pension advances. According to CFPB officials, they have provided oversight only in situations where financial products met certain characteristics. According to FTC officials, the agency has not taken any public law-enforcement action and has not received many complaints regarding this issue.

According to CFPB officials, they are concerned about the effect of pension advances on consumers, but stated that they have not taken an official position or issued any regulations regarding pension advance transactions or products, or taken any related enforcement actions. CFPB officials reported that the Assistant Director of its Office of Servicemember Affairs has received a few complaints directly from individual military pensioners, but they are unable to determine if there are more complaints about pension advances because their complaint database does not allow consumers to specifically submit complaints about this type of product.[56] In responding to a draft of our report, CFPB asserted that it has authority over these types of consumer-protection issues and is studying the structure of certain pension advance products and whether activities related to the offering of certain financial products violated any federal consumer financial law within CFPB's authority.

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[55]The FTC Act empowers FTC to, among other things, (1) prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce; (2) seek equitable relief for conduct injurious to consumers; (3) prescribe trade regulation rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; and (4) conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce. 15 U.S.C. § 45 et. seq. FTC also has the authority to enforce rules prescribed by CFPB with respect to entities subject to FTC jurisdiction. 12 U.S.C. § 5581(b)(5)(C)(ii). Certain entities, including banks, are excluded from FTC jurisdiction. 15 U.S.C. § 45(a).

[56]According to a CFPB official, CFPB's consumer database has pre-defined categories from which consumers can choose in order to submit complaints. These fields include categories such as bank account, credit card, money transfer, payday and student loan, or vehicle or other consumer loan. There is no category related to pension advances or option to select "other." Therefore, according to this CFPB official, a consumer would not have an option to directly submit a complaint regarding pension advances in CFPB's database.

FTC administers the Consumer Sentinel Network, which houses millions of consumer complaints pertaining to a wide range of industries and practices.[57] At our request, FTC officials provided complaint data from the Consumer Sentinel Network about either a list of entities that we initially identified as being involved in pension advances, or complaints containing specific search parameters such as “pension advance” and “pension sale.” Through our analysis of these data, we identified 25 complaints related to companies that we determined were involved in pension advances.[58] According to FTC officials, the agency was aware of a few complaints prior to our request, and the number of complaints received is one of several factors used when determining whether to conduct an investigation. It has not undertaken any public law-enforcement actions pertaining to pension advances and noted that it was unable to discuss whether any law-enforcement actions were under way. However, FTC officials reiterated that they identified very few consumer complaints and noted that FTC is governed by a public-interest provision, rather than an obligation to investigate each and every complaint it receives. It therefore focuses its limited resources on matters that tend to affect large numbers of consumers.

By conducting a review to identify whether some questionable practices—such as the ones described in this report—are unfair or deceptive or are actually loans that should be subject to disclosure rules under TILA, and taking oversight or enforcement action if necessary, CFPB and FTC could help ensure that vulnerable pensioners are not harmed by companies trying to exploit them.

As previously mentioned, federal laws prohibiting the assignment of benefits could also be applicable to pension advance transactions, if these transactions involve directly transferring all or part of the benefit to a third party. The transactions that we assessed during our investigative

[57]FTC’s Consumer Sentinel Network is an online database, available to law-enforcement agencies, that compiles consumer complaints received by FTC and law-enforcement and other organizations, including other federal and state agencies and nonprofit organizations. According to FTC officials, complaints from CFPB's complaint database are included in the Consumer Sentinel Network, and, like CFPB's database, the Consumer Sentinel Network does not contain a specific category for pension advance complaints.

[58]On the basis of our analysis of these data, we determined that 12 of the 25 complaints related to pension advances. The remaining 13 complaints do not appear to be related to pension advances but were related to the pension advance companies that we identified.

calls did not involve a direct transfer of funds from pension administrators to third parties except for one instance where a company representative acknowledged that this would depend on who is funding the pension. Courts have varied in their interpretation of whether antiassignment laws apply to pension advances, even when they include an indirect transfer of pension benefits.[59]

The securities laws have not been applied to pension advance products. SEC's oversight of companies that issue securities focuses on reviewing the companies' required disclosures rather than examining or supervising the companies. Every offer and sale of a security must be registered with the SEC or exempt from registration under the Securities Act of 1933 (1933 Act).[60] The Securities Exchange Act of 1934 (1934 Act) generally requires brokers or dealers that effect securities transactions, or that induce or attempt to induce the purchase or sale of securities, to register with the SEC.[61] Generally, all registered broker-dealers that deal with the public must become members of FINRA. Member broker-dealers must comply with FINRA rules, which, among other things, require communications used with investors to promote the offer and sale of securities to be fair and balanced, not misleading, and to include certain disclosures regarding the risks and fees associated with the products they offer and sell. Disclosures made under the federal securities laws are also subject to the antifraud provisions of the 1933 Act and 1934 Act, which

[59]See examples of variations in rulings on whether pension advances violate antiassignment laws in *In re Pierson*, 447 B.R. 840 (Bankr. N.D. Ohio March 25, 2011); *In re Dunlap*, 458 B.R. 301 (Bankr. E.D. Va. Sept. 13, 2011); and *Henry v. Structured Investments Co.,* LLC, No. 05CC00167, Statement of Decision on Phases 2 and 3 of Bifurcated Trial (Cal. Super. Ct., Sept. 7, 2011).

[60]Securities Act of 1933, 48 Stat. 74 (1933) (codified as amended at 15 U.S.C. §§ 77a *et seq.*). The 1933 Act includes an investment contract in the definition of what constitutes a security. 15 U.S.C. § 77b(a)(1). The Supreme Court held that an investment contract is: (1) an investment of money; (2) in a common enterprise; (3) with the expectation of profits derived from the efforts of others. SEC v. W.J. Howey Co., 328 U.S. 293, 298-299 (1946).

[61]Securities Exchange Act of 1934, 48 Stat. 881 (1934) (codified as amended at 15 U.S.C. §§ 78a *et seq.*). The 1934 Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the accounts of others," and a "dealer" as "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise." 15 U.S.C. § 78c(a)(4)(A), (a)(5)(A).

prohibit material misrepresentations or omissions and provide a general antifraud remedy for purchasers and sellers of securities.[62]

Consumer Education

Consumer financial education can play a key role in helping consumers understand the advantages and disadvantages of financial products, such as pension advances. As we reported in 2013, it can be particularly important for older adults to be informed about potentially risky financial products, given that this population can be especially vulnerable to financial exploitation.[63] The federal government plays a wide-ranging role in promoting financial literacy, with a number of agencies providing financial education initiatives that seek to help consumers understand and choose among financial products and avoid fraudulent and abusive practices.[64] CFPB plays a role in financial education, having been charged by statute to develop and implement initiatives to educate and empower consumers (in general) and specific target groups to make informed financial decisions.[65] The multiagency Financial Literacy and Education Commission, which is chaired by the Secretary of the Treasury and vice-chaired by the director of CFPB, is responsible for coordinating federal financial education efforts.[66]

We found that CFPB and four other agencies had taken actions to provide consumer education on pension advances:[67]

- CFPB's website has a page entitled "Spotlight on Scams That Target Older Adults," added in June 2013, which provides information about

[62]15 U.S.C. §§ 77q, 78j(b).

[63]GAO-13-626T.

[64]GAO, *Financial Literacy: Overlap of Programs Suggests There May Be Opportunities for Consolidation*, GAO-12-588 (Washington, D.C.: July 23, 2012).

[65]12 U.S.C. § 5493(d).

[66]In 2003, Congress created the multiagency Financial Literacy and Education Commission, the responsibilities of which include developing a national strategy to promote financial literacy and education, coordinating federal efforts, and identifying areas of overlap and duplication. Pub. L. No. 108-159, Title V, 117 Stat. 1952, 2003 (codified at 20 U.S.C. §§ 9701–08).

[67]The four other agencies that had taken actions to provide consumer education on pension advances included three agencies included in our review—SEC, FINRA, and PBGC—as well as the Federal Deposit Insurance Corporation, which was not included in our review.

the risks of pension advance loans and advice to consumers who are considering them. CFPB also has a short article in the "Ask CFPB" section of its website, added in October 2013, similarly cautioning consumers to be wary of pension advance products, noting product costs can be high. The Federal Deposit Insurance Corporation and CFPB released the training course "Money Smart for Older Adults" in June 2013, which provides information on topics such as common frauds and scams targeting older adults. One of the course's modules covers scams that target veteran benefits and includes information about a pension advance scheme.

- The SEC and FINRA issued a joint Investor Bulletin in May 2013 entitled "Pension or Settlement Income Streams—What You Need to Know Before Buying or Selling Them." The bulletin addresses both pensioners who are considering selling their pensions and investors who are considering acquiring the rights to such pension payments.[68]

- PBGC's fall 2013 newsletter to retirees warned against individuals peddling investments in pension incomes and falsely claiming that PBGC backs them.

However, several other federal agencies—including some that regularly communicate with pensioners as part of their mission—do not provide information about pension advance products and their associated risks and were not aware of CFPB publications at the time of our review.[69] Also, these agencies reported that they have not identified many related complaints and some were just learning about pension advance products. FTC educates consumers on consumer products and avoiding scams through multimedia resources—including its website, print publications, and videos—but it has not provided any specific consumer education about pension advances to date. FTC officials reported that they have not ruled out providing consumer education and the agency is considering taking actions. We also did not identify material on pension advance products in the information or educational material provided by federal agencies in our review that oversee pensions—including EBSA and Treasury, which have oversight over private-sector pensions; OPM, which

[68]Securities and Exchange Commission, Office of Investor Education and Advocacy, *Pension or Settlement Income Streams: What You Need to Know Before Buying or Selling Them*, Investor Bulletin (Washington, D.C.: May 2013).

[69]Officials from FTC, EBSA, Treasury, PBGC, OPM, and VA were not aware of CFPB's various consumer-education publications on pension advances at the time of our review.

has oversight of federal civilian pensions; DOD, which has oversight over military pensions; and VA, which has oversight over a needs-based benefit provided to veterans called a "pension."[70] While each of these agencies have existing mechanisms used to inform and educate pensioners (see table 3), only PBGC has used these mechanisms to alert its constituencies to the risks related to pension advance companies.[71] Also, a DOD official told us he contacted CFPB in June 2013 to seek assistance on educational content that might be useful for its pensioners, and CFPB provided this information. However, as of March 2014, DOD had not yet determined how it will use this information.

Table 3: Mechanisms for Federal Agencies to Communicate with Pensioners

Agency	Mechanisms for communicating with pensioners
Employee Benefits Security Administration (EBSA)	EBSA's Office of Outreach, Education, and Assistance fields questions and publishes educational materials and literature to help private-sector pensioners.
Department of the Treasury (Treasury)	Treasury's Internal Revenue Service (IRS) provides educational material on retirement plans to retirees on its website.
Pension Benefit Guaranty Corporation (PBGC)	PBGC publishes a retiree newsletter and makes information available for beneficiaries on its website.
Office of Personnel Management (OPM)	OPM sends benefits administration letters and periodically provides literature as part of outreach efforts after an individual's retirement.
Department of Defense (DOD)	DOD provides education to military members through family centers, which provide family counseling and education. DOD also publishes a retiree newsletter. In addition, DOD officials told us that they could add a warning about pension advance transactions to the bottom of Retiree Account Statements.
Department of Veterans Affairs (VA)	VA provides fact sheets and other educational material to beneficiaries, and posts alerts on its website about matters that may be harmful to beneficiaries.

Source: GAO interviews with federal agencies and review of publicly available educational resources on some of the agencies' websites.

Officials from five of these six agencies agreed that it would be beneficial to use their existing communication methods to inform their respective constituents about pension advances. We have cautioned against overlap—multiple programs with similar goals and activities—in federal

[70]Pension plans overseen by these agencies are subject to antiassignment provisions described earlier in this report.

[71]In its fall 2013 newsletter to retirees, PBGC reported that its Office of Inspector General warns that individuals are peddling fraudulent investments in pension incomes supposedly backed by PBGC and clarified that PBGC does not sell, or make available for purchase, pensions or pension incomes.

financial education efforts.[72] However, we also have recognized that financial education programs may be more effective if the program's delivery method is adapted so that it is appropriate to its target demographic.[73] Working through the Financial Literacy and Education Commission, CFPB could help ensure that existing consumer-education materials on pension advances are reaching the populations most likely to consider such products by coordinating distribution of such materials with agencies that have oversight over pensions to provide education on the pros and cons and relevant consumer protections associated with pension advances.

Conclusions

Some older Americans are both at greater risk of being in financial distress and of being financially exploited as they typically live off incomes below what they earned during their careers and assets that took a lifetime to accumulate. Some pension advance companies market their products as a quick and easy financial option that retirees may turn to when in financial distress from unexpected costly emergencies or when in need of immediate cash for other purposes. However, pension advances may come at a price that may not be well understood by retirees. As illustrated by examples in this report and by related consumer complaints and lawsuits, the lack of transparency and disclosure about the terms and conditions of these transactions, and the questionable practices of some pension advance companies, could limit consumer knowledge in making informed decisions, put retirement funds at risk, and make it more difficult for consumers to file complaints with federal agencies, if needed.

Given the risks associated with pension advance products, the questionable practices that we identified, and the increasing population of retirees, a CFPB review of whether these products violated consumer laws within CFPB's authority could help ensure consumers are not harmed by companies trying to exploit them. Similarly, a formal evaluation by FTC of known information about pension advance companies to determine whether practices such as the ones described in this report are unfair or deceptive, and therefore may warrant related enforcement actions, would contribute to protecting consumers.

[72] GAO-12-588.

[73] GAO, *Financial Literacy: A Federal Certification Process for Providers Would Pose Challenges*, GAO-11-614 (Washington, D.C.: June 28, 2011).

While it is important to recognize that even informed people can voluntarily enter into agreements that may not ultimately be in their best long-term financial interests, and therefore bear some responsibility for their choices, awareness of the pros and cons could help in mitigating potential exploitation. More consumer education about the pros and cons associated with pension advances could help consumers understand any associated risks of undertaking these financial transactions, as well as the related consumer protections afforded to them. While CFPB and selected other federal agencies have developed some information and education for consumers on pension advances and the risks they pose, that information is not being disseminated by several federal agencies that regularly communicate with pensioners, in part because the agencies were not aware of these resources. CFPB and the Financial Literacy and Education Commission represent the nexus for interagency coordination on financial education. Working through the commission to coordinate distribution of existing materials on pension advances with the agencies overseeing pensions, CFPB could help ensure that the materials reached the populations most likely to consider such products. Such dissemination also could help increase knowledge about pension advances among federal agency staff interacting with these consumer populations. Finally, these efforts would contribute to a federal financial literacy goal—that consumers have the tools to evaluate whether financial products, such as pension advances, are in their best interests.

Recommendations for Executive Action

In order to strengthen federal oversight or enforcement of pension advance products, we recommend that

- the Director of CFPB review pension advance practices, such as those highlighted in this report, and exercise oversight as appropriate; and
- the Chairwoman of FTC review pension advance companies and the questionable practices that we highlight in this report, and exercise enforcement as appropriate.

To help ensure that consumer-education materials on pension advances reach their target audiences, we recommend that

- the Director of CFPB, through the Financial Literacy and Education Commission, coordinate with the federal agencies that regularly communicate with pensioners—such as EBSA, Treasury, PBGC, OPM, DOD, and VA—on the dissemination of existing consumer-education materials on pension advances.

Agency and Third-Party Comments and Our Evaluation

We provided a draft of this report to CFPB and FTC for comment. We also provided relevant sections of a draft of this report to EBSA, Treasury, PBGC, OPM, DOD, VA, the SEC, and FINRA for comment. In addition, we provided selected excerpts of the draft report to NCLC and the North American Securities Administrators Association to obtain their views and verify the accuracy of the information provided.

In its written comments, which are reproduced in appendix III, CFPB concurred with our recommendations that CFPB review pension advance practices and exercise oversight as appropriate and coordinate with the federal agencies that regularly communicate with pensioners on the dissemination of existing consumer-education materials on pension advances. In its response, CFPB stated that it believes that this report provides important insight into potentially questionable activities with respect to pension advance transactions and how they can negatively affect consumers, including older Americans and military veterans. CFPB also stated that it is currently examining potentially improper practices in this area. This action, if implemented effectively and including the practices highlighted in this report, would address the intent of our recommendation. In addition, CFPB stated that it agrees that consumer education must play a key role in helping consumers understand the advantages and disadvantages of financial products, such as pension advances, and that collaboration and coordination among agencies and stakeholders can help educate consumers and prevent future threats to financial stability. In technical comments, CFPB noted that it would not be accurate to say that CFPB has not made a determination about whether it has authority over pension advance products. CFPB clarified that, depending on the structure of a particular pension advance product, CFPB would have authority over certain types of such products and will act on that authority if the offer of a particular product violates applicable federal consumer financial law. In response, we removed language from our recommendation to CFPB that it should make a determination about whether it has authority over these products. Other CFPB technical comments were incorporated into the report, as appropriate.

In an e-mailed response on May 19, 2014, the Director of FTC’s Bureau of Consumer Protection agreed with our recommendation and said that she shares GAO’s concerns about pension advance products and has directed staff to review this industry and its practices, and, if warranted, to take appropriate law-enforcement action, as we recommended. This action, if implemented effectively, would address the intent of our recommendation. The Director also stated that FTC will coordinate its efforts, where appropriate, with CFPB, pursuant to the memorandum of understanding between the two agencies. In addition, the Director noted that, in determining whether to take enforcement or other action in any particular situation, FTC may consider a number of factors, including the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; and the likelihood of preventing future unlawful conduct and securing redress or other relief. Further, the Director stated that FTC staff will be accelerating plans to publish consumer-education materials designed to help consumers better understand how these pension advance products work, the advantages and disadvantage of these products, and how consumers can protect themselves when using these products. In technical comments, FTC emphasized that it is primarily a law-enforcement agency with authority over most sectors of the economy and does not have any supervisory authority. In response, we modified the recommendation to FTC to exercise enforcement, as appropriate, rather than oversight. We also clarified in the report that we use the term oversight to include supervisory, regulatory, and enforcement functions. Other FTC technical comments were incorporated into the report, as appropriate.

EBSA, Treasury, PBGC, VA, the SEC, and the North American Securities Administrators Association also provided technical comments that were incorporated into the report, as appropriate. OPM, DOD, FINRA, and NCLC reported that they had no comments.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the 10 federal agencies and organizations we reviewed, relevant congressional committees, and other interested parties. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff members have any questions about this report, please contact me at (202) 512-6722 or lords@gao.gov. Contact points for our

Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

Stephen M. Lord
Managing Director
Forensic Audits and Investigative Service

Appendix I: Objectives, Scope, and Methodology

This report (1) describes the number and characteristics of entities offering pension advances and the marketing practices that pension advance companies employ; (2) evaluates how pension advance terms compare with those of other financial products; and (3) evaluates the extent to which there are federal oversight mechanisms in place related to pension advances.

To describe the number and characteristics of entities offering pension advances and the marketing practices that pension advance companies employ, we conducted four steps: (1) identifying companies that offered pension advances using public and nonpublic data; (2) obtaining demographic information about these companies; (3) obtaining additional information directly from a subset of companies selected for illustrative example; and (4) reviewing information provided by companies offering pension advances, including the terms and agreements and the structure of the transactions.

1. We identified 38 companies that offered pension advance products by: (1) performing a comprehensive search of companies that market these products to consumers online; (2) conducting queries of public and nonpublic databases that capture information on companies, such as Accurint, the Federal Trade Commission's (FTC) Consumer Sentinel Network, LexisNexis, Dun & Bradstreet, Better Business Bureau, and Proquest databases; (3) conducting library searches of publications that may capture print ads; and (4) interviewing officials from agencies and organizations that provide and collect information to and from retired consumers.[1] We conducted these searches using search criteria such as "pension advances," "pension loans," "pension sales," "cash for pensions," "pension lump sum," "pension buyouts,"

[1]The 38 companies that we identified and reviewed either currently or have recently offered pension advances within the last 2 years. We describe this group of companies throughout the report. Also, the agencies and organizations that we met with are identified later in this appendix.

and “structured settlements.”[2] For purposes of this report, we focused more on the pension advance component than on the pension investment component in order to highlight the direct effect on pensioners.

2. For the 38 companies that we identified as having offered pension advance products, we obtained demographic information using public and nonpublic data, including: (1) location, (2) size, (3) annual sales, (4) whether they appear to be affiliated or run by the same owner, (5) range of various types of financial products they offer, and (6) consumer complaints or lawsuits filed against them.[3] To gather demographic data on the entities we identified, we used information provided by the companies on their websites, corroborated and supplemented to the greatest extent possible with public or nonpublic data provided in Accurint, LexisNexis, FTC’s Sentinel Network, and any other official databases that we identified with relevant information. On the basis of complaint data that we received from FTC as well as publicly available complaint data, we also identified whether companies had pension advance complaints filed by consumers against them and the nature of such complaints.
3. We obtained additional data on 19 of the 38 pension advance companies selected for case studies, which we use for illustrative examples in this report. To select the case-study companies, we

[2]Our list of pension advance companies may not capture all companies that exist. Some companies may exist that do not market through the Internet or publications that we reviewed or that do not have documented complaints or did not register with any of the sources for which we had access. However, we believe that our population effectively describes the minimum level of variation or similarities in pension advance companies and transactions. In addition, as we describe in this report, some companies included in this total are affiliated with each other. Therefore, the number 38 reflects the number of companies that we identified that present themselves to consumers as separate companies.

[3]For purposes of this report, the company location is based on: the address provided by the company on its website; Accurint, Dun & Bradstreet, and Better Business Bureau reports, if available; or legal information provided by the company. Also, we were only able to determine the size of 8 out of 38 companies due to limited information on this characteristic in public and nonpublic databases or on the companies’ own websites that we reviewed.

chose companies within 10 selected states[4] based on: (1) varying types of marketing claims or pitches, such as offers, service guarantees, or targeting of specific groups of consumers; (2) presence of or lack of consumer complaints through sources like FTC's database;[5] (3) a range of represented size of businesses;[6] and (4) availability of consumer-friendly information on the company. For these 19 selected companies, we conducted undercover investigative phone calls, submitted online quote requests for pension advances, or obtained documentation directly from the companies. Posing as a federal, military, or private-sector retiree receiving a pension, our undercover investigator solicited information about the companies and their pension advance products directly from the companies. Though not generalizable to all pension advance companies, this information provided insights into pension advance transactions.

4. We reviewed the public marketing strategies employed by the 38 companies, including: (1) what venues they used to market their products; (2) whether any particular group was being targeted; (3) whether companies operated by the same owner were marketing themselves differently; and (4) whether what they included in the advertising clearly disclosed the actual terms they offered. For the 19 case-study companies, we also obtained additional information during undercover investigative phone calls, follow-up online quote requests for pension advances, or subsequent documentation that the companies provided on the terms of these agreements or offers.

[4]The following states were selected based on the number of complaints identified in FTC's consumer complaint database, number of pension advance companies that we identified located in the state, number of residents over age 65 (potential pensioners), and our access to existing licenses or templates for creating licenses for the state—Arizona, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, New Jersey, and Oklahoma. For variation in consumer-protection information outside the states where companies were located, we also selected Maryland and Texas for our review of consumer-protection laws. We also considered whether these states had a larger number of military personnel and represented states with varying degrees of stringency regarding consumer-protection laws. We found that California, Florida, and Texas reflected our desired variation related to these additional considerations.

[5]Of the 19 companies selected for case studies, 4 companies had consumer complaints and 15 companies had no complaints identified on the basis of our preliminary research for case-study selection.

[6]This included both small companies (with up to 500 employees and annual sales below $35.5 million) and companies for which we were unable to determine the size. We did not identify any companies that specifically met our definition of large (more than 500 employees and annual sales greater than $35.5 million).

To evaluate how pension advance terms compare with those of other financial products, for the six companies that provided written quotes to our undercover investigator, we conducted an actuarial analysis of the lump sum that fictitious pensioners were offered to determine how the pension advance products compare with other financial products. For purposes of this report, we considered comparable financial "products" to be loans and lump-sum payment options provided directly through pension plans, as each of these products or offerings have characteristics similar to pension advances.[7] We assessed the pricing of lump-sum quotes provided by pension advance companies to these two comparable products. In our comparison with loan rates, we calculated the cost of each lump-sum quote to the annuitant as an effective interest rate. The effective interest rate was calculated by equating the lump sum to the amount of a loan, the monthly annuitant payment to a loan repayment amount, and the total number of monthly annuitant payments to the repayment period. We compared the resulting effective interest rate calculations with the usury rate (the legal limit on loan interest rates that can be charged) in the state where the pensioner who received the pension advance offer resided. In our comparison with lump-sum payment options provided directly through pension plans, we determined what the minimum lump-sum amount would be if the lump-sum rules of the Employee Retirement Income Security Act of 1974 (ERISA), which apply to private-sector defined-benefit plans, were applicable to pension advances. We compared the resulting minimum lump-sum calculation under ERISA guidelines with the lump-sum amount offered to our undercover investigator by pension advance companies. To arrive at the ERISA lump-sum amounts, we followed the Internal Revenue Code requirements that determine, for plans that offer lump sums, the minimum amount of such lump sums for the pension plan to remain tax-qualified.[8]

[7]We considered consumer loans and lump-sum payments offered by pension plan sponsors to be comparable products for purposes of this report. In general, a loan can be defined as money advanced to a borrower, to be repaid at a later date, usually with interest. A loan contract specifies the terms and conditions of the repayment, including the finance charge or interest rate. A lump-sum payment may be offered by certain pension plan sponsors in exchange for an ongoing pension payment. We did not determine whether the pension advances were consumer loans for purposes of the usury laws, whether the pensioner could qualify for lower-interest-rate products, or whether the pensioners were eligible for lump-sum payments from pension plan sponsors. We recognize that there are other consumer financial products that may also be comparable, such as credit cards and other consumer credit products. For purposes of this report, we focus on the two financial products that we believe are most comparable.

[8]26 U.S.C. § 417(e).

These minimum lump sums vary depending on the form and amount of a participant's promised benefit, the participant's age, and the particular year and month applicable to the calculation, as the interest rates used in the calculation depend on bond market interest rates published by the Department of the Treasury (Treasury), which change from month to month. For this purpose, we used the interest rates applicable to a December 2013 calculation, the most recent rates available at the time of our calculations. In practice, pension plan sponsors that amend their plans to provide onetime offers of lump sums to plan participants (known as lump sum "windows") have some ability to time the applicable month of the calculation, which can sometimes allow sponsors to select a prior month in which interest rates are higher than current interest rates, which lowers the calculated lump-sum amount, to the plan sponsor's benefit.[9] Conversely, sponsors of plans that offer an ongoing lump-sum option do not have this ability, as interest rates in the applicable month of the calculation could be either higher or lower than current interest rates on an ongoing basis. For our calculations, we used interest rates current as of the month of the offer (for almost all of the offers we received, in December 2013) or the month prior to the offer (for a few offers that were obtained in January 2014), so that our hypothetical ERISA lump-sum amounts are most comparable, conceptually, to what pension plans that have an ongoing lump-sum option would offer because we are taking out the intentional variation that a window may have built in.

To evaluate the extent to which there are federal oversight mechanisms in place related to pension advances, we (1) reviewed criteria from relevant laws and regulations regarding pension advances, including those relevant to pension assignments and securities; and (2) identified and assessed federal oversight or consumer-education initiatives related to pension advances.

1. To determine which federal or state laws and regulations are relevant to pension advances, we met with federal and state agencies, and related organizations, that have oversight over consumer-protection regulations, financial transactions, and marketing and sales practice regulations. These entities included Treasury, the Bureau of Consumer Financial Protection (CFPB), FTC, Securities and Exchange Commission (SEC), and the Financial Industry Regulatory

[9] We have ongoing work related to these onetime offers to plan participants.

Authority (FINRA), as well as the National Association of Attorneys General, North American Securities Administrators Association, and state regulators from Arkansas, California, Florida, and Massachusetts. We also met with federal agencies that have oversight over pensions, such as the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA), Pension Benefit Guaranty Corporation (PBGC), Office of Personnel Management (OPM), Departments of Defense (DOD) and Veterans Affairs (VA), and Treasury. In addition, we met with advocacy organizations associated with the retired population, such as the Pension Rights Center and the National Consumer Law Center. We also identified important state legal cases and investigations to identify the laws or regulations applied in legal or investigative actions taken against pension advance companies.

2. To identify and describe federal oversight initiatives, we interviewed the aforementioned federal agencies about the extent to which they are aware of pension advances, whether they have undertaken any actions to monitor or assess relevance to federal laws and regulations under their jurisdiction, or provided education outreach, training, or other oversight efforts. As part of this assessment, we identified systems and processes at federal agencies that can collect information about complaints on pension advances, and identified whether or how officials used this information to inform their oversight activities. Finally, we reviewed agency documentation to determine what oversight or consumer-education actions agencies have taken.

We conducted this performance audit from August 2013 to June 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted our related investigative work from September 2013 to June 2014 in accordance with the standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

Appendix II: Additional Details on Pension Advance Companies GAO Identified

Company number	Location	Life insurance requirement (yes/no)	Affiliated companies identified (company number)	Reference to product as a loan (yes/no)	Part of investigative phone calls[a] (yes/no) (if applicable, type of undercover profile used)	Disposition of phone call	Written quote provided (yes/no)
1	CA	Yes	2 3 4 5 6 27 29 34	Yes[b]	Yes (Federal[c], Private Sector[d], and Military[e])	Company provided a written quote for the federal profile but did not provide one for the private sector or military profiles. The company told the private-sector profile that he did not qualify for the program because he did not have income other than the pension and Social Security. The company failed to send us a quote as agreed for the military profile.	Yes—three offers provided for selling three differing amounts of the monthly pension payment for the federal profile
2	CA	Unknown	1	Unknown	No	n/a	n/a
3	CA	Unknown	1	No	No	n/a	n/a
4	CA	Unknown	1 5	Unknown	No	n/a	n/a
5	CA	Unknown	1 4	Yes[b]	No	n/a	n/a
6	FL	Yes	1 13	No	Yes (Private Sector[d])	Company provided a written quote.	Yes—one offer provided for a portion of the monthly pension payment
7	CA	Unknown	8 9 10 14	Unknown	No	n/a	n/a
8	CA	No	7 9 10	No	Yes (Private Sector[d])	Company unwilling to provide a quote without performing an instant credit check.	n/a

Company number	Location	Life insurance requirement (yes/no)	Affiliated companies identified (company number)	Reference to product as a loan (yes/no)	Part of investigative phone calls[a] (yes/no) (if applicable, type of undercover profile used)	Disposition of phone call	Written quote provided (yes/no)
9	CA	No	7 8 10 11	Yes	Yes (Private Sector[d])	Company unwilling to provide a quote without performing an instant credit check.	n/a
10	CA	No	7 8 9	No	Yes (Military[e])	Company unwilling to provide a quote without performing an instant credit check.	n/a
11	GA	Yes	9	Yes[b]	Yes (Federal[c])	Company advised us to complete an online quote request. However, the company's online quote request form was limited to submitting contact information rather than submitting an online quote request.	n/a
12	CA	Unknown	34	No	No	n/a	n/a
13	AR	Unknown	6 15 17 18 19 23 24	Unknown	Yes (Federal[c])	Company claimed to never have worked with pensions. However, this company was named in two Cease and Desist Orders issued by the Arkansas Securities Department for violating provisions of the Arkansas Securities Act. This company's pension advance products are described in these orders.	n/a
14	Unknown	Unknown	7	Unknown	No	n/a	n/a

Company number	Location	Life insurance requirement (yes/no)	Affiliated companies identified (company number)	Reference to product as a loan (yes/no)	Part of investigative phone calls[a] (yes/no) (if applicable, type of undercover profile used)	Disposition of phone call	Written quote provided (yes/no)
15	CA	Yes	13	No	Yes (Federal[c] and Private Sector[d])	Company provided a written quote for the federal profile. The company told the private-sector profile that he would not be eligible for a pension advance because of his income, his age, and the cost of life insurance.	Yes—four offers provided for differing amounts of the monthly pension payment and differing number of years for the terms for the federal profile
16	IL	Yes	17	No	No	n/a	n/a
17	CA	Yes	13 16 18 19 20 21 22 25	No	No	n/a	n/a
18	CA	Yes	13 17	No	No	n/a	n/a
19	CA	Yes	13 17 20	No	Yes (Federal[c] and Military[e])	Company provided written quotes in response to the investigative phone call with the military profile as well as a separate online quote request submitted by the federal profile.	Yes—87 offers provided[f]

Company number	Location	Life insurance requirement (yes/no)	Affiliated companies identified (company number)	Reference to product as a loan (yes/no)	Part of investigative phone calls[a] (yes/no) (if applicable, type of undercover profile used)	Disposition of phone call	Written quote provided (yes/no)
20	AZ	Yes	17 19 21 22	Yes	Yes (Federal[c])	Company advised us to fill out an online quote request. We then received a response stating that the fictitious pensioner had already been provided with a quote by a related company.	n/a
21	AZ	Yes	17 20 22	No	No	n/a	n/a
22	AZ	Yes	17 20 21	No	No	n/a	n/a
23	AR	Yes	13	No	No	n/a	n/a
24	Unknown	Yes	13	No	No	n/a	n/a
25	GA	Yes	17	No	No	n/a	n/a
26	CA	No	27	Yes[b]	Yes (Military[e])	We were unable to reach this company by phone. We submitted an online quote request and received a written quote from Company 27.	n/a
27	CA	Unknown[g]	1 26 28	Unknown	Yes (Private Sector[d])	We were unable to reach this company by phone. We submitted an online quote request to affiliated Company 26, and Company 27 provided a written quote for our military profile.[g]	Yes—two offers provided for selling two differing amounts of the monthly pension payment for the military profile listed under Company 26 above
28	CA	No	27	No	No	n/a	n/a

Company number	Location	Life insurance requirement (yes/no)	Affiliated companies identified (company number)	Reference to product as a loan (yes/no)	Part of investigative phone calls[a] (yes/no) (if applicable, type of undercover profile used)	Disposition of phone call	Written quote provided (yes/no)
29	OK	Yes	1	No	Yes (Military[e])	We were unable to reach this company by phone. We submitted an online quote request and received an e-mail from this company restating the information provided in the written quote with the header of Company 1. The actual quotes were not provided.	n/a
30	FL	Yes	Unknown[h]	No	Yes (Private Sector[d])	Company requested that we send them an e-mail with our profile information. We did so but did not receive a response.	n/a
31	CA	No	Unknown[i]	No	Yes (Military[e])	Company advised us to submit an online quote. However, the company's online quote request form was limited to requesting contact information rather than submitting an online quote request.	n/a
32	DE	Unknown	Unknown	Yes[b]	Yes (Federal[c])	We were not able to reach this company by phone. We submitted an online quote request and received information on terms and requirements by e-mail but did not receive a written quote.[i]	n/a

Company number	Location	Life insurance requirement (yes/no)	Affiliated companies identified (company number)	Reference to product as a loan (yes/no)	Part of investigative phone calls[a] (yes/no) (if applicable, type of undercover profile used)	Disposition of phone call	Written quote provided (yes/no)
33	DE	No	Unknown	No	Yes (Federal[c] and Private Sector[d])	During these calls, the company either claimed to buy pensions but not "government pensions" or to no longer work with pensions.	n/a
34	IN	Yes[j]	1 12	Yes[b]	Yes (Private Sector[d] and Military[e])	We were not able to reach this company by phone for the military profile. We submitted online quote requests for both our private sector and military profiles, and the company provided written quotes.	Yes—two offers provided[k]
35	NJ	Yes	Unknown	No	Yes (Private Sector[d])	Received voicemail saying company does not purchase pensions. However, we observed from the company's online marketing that this company did appear to offer pension advances but it did not have an online quote request application.	n/a
36	CO	No	Unknown	Yes	No	n/a	n/a
37	CO	Yes	Other[l]	No	No	n/a	n/a
38	OR	Yes	Unknown	No	No	n/a	n/a

Source: GAO analysis of pension advance company information and results of undercover investigative online quote requests and phone calls.

Notes: n/a = not applicable.

[a]We conducted undercover investigative phone calls to 19 pension advance companies using profiles for fictitious retirees receiving federal, military, or private-sector pensions. We also submitted undercover online quote requests as follow-up in some cases.

[b]Six of the 38 companies we reviewed referred to these pension advance products as a loan or "pension loan" on their websites and stated elsewhere on their websites that these products are not loans.

[c]The federal profile used was a 67-year-old male who carried a life-insurance policy and earned a net pension of $2,567 per month. This fictitious federal pensioner was a resident of either Maryland or

Florida. Also, we did not make an investigative phone call to Company 19 using the federal profile and instead submitted a separate online quote quest.

[d]The private-sector profile used was 71-year-old male residing in Texas who carried a life-insurance policy and earned a net pension of $733 per month. Also, we did not make an investigative phone call to Company 34 using the private-sector profile and instead submitted a separate online quote quest.

[e]The military profile was a 44-year-old male residing in California who carried a life-insurance policy and earned a net pension of $925 per month.

[f]This company provided 24 offers to a fictitious military pensioner residing in California and 63 offers to a fictitious federal pensioner residing in Maryland. These offers were for differing amounts of the monthly pension payment and differing numbers of years for the term.

[g]This company did not have an online presence during the time of our review but it operated through Company 26 and Company 28. We submitted an online quote request to Company 26 and received a written quote from Company 27 as a broker to Company 1.

[h]During our undercover investigative phone call with this company, the representative indicated that the company has a working relationship with one or more companies but did not provide additional details about these affiliations.

[i]In the e-mail it sent to the fictitious pensioner, this company claimed to have two lenders interested in speaking with the pensioner about a “pension loan,” and outlined basic terms and requirements that the pensioner would need to meet before continuing with the assessment.

[j]This company’s website stated that life insurance was required for pensioners receiving pension advances for terms of a certain number of years, but that the investor providing the funding would pay for the life insurance in total.

[k]This company provided one offer to a fictitious military pensioner residing in California and one offer to a fictitious private-sector pensioner residing in Texas. Both of these offers were for a portion of the monthly pension payments.

[l]During our audit research, we determined that this company acknowledged an affiliation with another company; however, the affiliated company does not appear to offer pension advance products and is therefore not included in on our list.

Appendix III: Comments from the Bureau of Consumer Financial Protection

cfpb Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

May 15, 2014

Mr. Stephen M. Lord
Managing Director, Forensic Audits and Investigative Service
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Lord:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) draft report, *Pension Advance Transactions: Increased Federal Oversight and Education Could Help Protect Consumers from Questionable Practices*, GAO-14-420. We appreciate GAO's consultation with the Consumer Financial Protection Bureau (Bureau) during its investigation and believe the report provides important insight into potentially questionable activities with respect to pension advance transactions and how they can negatively impact consumers, including older Americans and military veterans. The Bureau is currently examining potentially improper practices in this area.

We concur with the recommendations addressed to the Bureau in the draft report. The Bureau is actively investigating potential wrongdoing in this area. To the extent it identifies violations of federal consumer financial law, the Bureau will take appropriate action. This work includes making necessary assessments and enforcing the statutory authority available to the Bureau to protect consumers from unfair, deceptive, or abusive acts and practices under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and/or violations of disclosure and other rules under the Truth in Lending Act (TILA).

The Bureau also agrees, as GAO's report concludes, that consumer education must play a key role "in helping consumers understand the advantages and disadvantages of financial products, such as pension advances." As the report notes, the Bureau's Office for Older Americans (OA) has taken a number of steps both to educate and to engage older Americans and assist these consumers in making smart financial decisions.

consumerfinance.gov

Among other actions, in June 2013 the Bureau posted an advisory concerning the risks of pension advance products and disseminated a blog post including the advisory to thousands of aging advocates, stakeholders, and intermediaries to inform their respective communities and employees. In addition, OA included a section concerning pension loans in its "Money Smart for Older Adults" train-the-trainer curriculum, which the Bureau launched in June 2013, in partnership with the Federal Deposit Insurance Corporation (FDIC). Since the launch of Money Smart for Older Adults, OA provided 18 Train-the-Trainer programs in eleven states. The sessions have reached more than 1,300 participants representing financial and social services, law enforcement, legal professionals, and other stakeholder groups. More than 6,000 Money Smart Modules have been downloaded from the FDIC website and 43,000 copies of the Participant Resource Guide have been distributed nationwide by the CFPB (with another 30,000 copies back ordered).

In addition, the Bureau's Office for Older Americans routinely collaborates with our sister Federal agencies and other partners, including the Federal Trade Commission, Employee Benefits Security Administration, Pension Benefit Guaranty Corporation, Securities and Exchange Commission, Financial Industry Regulatory Authority, Department of Health and Human Services, Department of Housing and Urban Development, FDIC, United States Postal Inspection Service, National Credit Union Administration, Commodity Futures Trading Commission, Treasury Department, and Department of Veterans Affairs, to develop and distribute consumer education information to older Americans.

The Bureau agrees that collaboration and coordination among agencies and stakeholders can help educate consumers and prevent future threats to financial stability and the Bureau will continue to seek the most efficient and effective ways to engage with and educate consumers.

Sincerely,

Stacy Canan

Stacy Canan
Deputy Assistant Director
Office of Financial Protection for Older Americans

consumerfinance.gov

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Stephen M. Lord, (202) 512-6722 or lords@gao.gov

Staff Acknowledgments

In addition to the contact named above, Latesha Love, Assistant Director; Gabrielle Fagan; Angela Pun; Nada Raoof; and Nikole Solomon made key contributions to this report. Also contributing to the report were Paul Desaulniers, Barbara Lewis, David Lin, Jeffrey McDermott, Maria McMullen, Aron Szapiro, Frank Todisco, and Helina Wong.

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