

**PENSION ADVANCES: LEGITIMATE
LOANS OR SHADY SCHEMES?**

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WEDNESDAY, SEPTEMBER 30, 2015

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m., Room 562, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Cotton, Tillis, McCaskill, Donnelly, Warren, and Kaine.

OPENING STATEMENT OF SENATOR SUSAN M. COLLINS, CHAIRMAN

The CHAIRMAN. Good afternoon. The hearing of the Special Committee on Aging will come to order.

Decades ago, the warning “caveat emptor,” buyer beware, was the best advice one could give to a consumer seeking to borrow money. Well, that advice is still valid today.

There are laws that seek to ensure that consumers understand the obligations that they are taking on and that lenders have to play by the rules. Since the passage of the Federal Truth in Lending Act in 1968 and similar State laws around the Nation, credit providers have been required to disclose key terms of consumer credit agreements up front in easy to understand language. If you want to know what interest rate you will pay on a new credit card, you will find it in big, bold letters right there on the front of your application. Likewise, interest rates on car loans, personal loans, mortgages, and myriad other consumer loan products are clearly and conspicuously displayed, but as we will learn today, that is not true for so-called pension advances. Pension advances are agreements under which consumers, usually retirees, receive cash lump sums in exchange for part or all of their monthly pension check. The effective interest rate on these lump sum payments can be outrageous. One company charged nearly 120 percent last year. That fact, however, is hidden in the pension advance agreements, which do not include the simple and clear disclosures required by law for consumer loans. Instead, these contracts are so convoluted that it is difficult for consumers to realize just how much their lump sum pension advance is really costing them.

By way of comparison, I would like to direct your attention to this chart. Using the State of Washington as an example, this chart shows the average interest rate charged on various forms of consumer debt compared to the effective rates on pension advances.

The first three bars from the left show interest rates on typical sources of consumer credit—4.3 percent for car loans, 9.7 percent for personal loans, and 12 percent for credit card debt.

The three bars on the right are interest rates calculated by the Government Accountability Office, better known as GAO, on pension advances that one company sold in Washington State over the past three years. As you will see, the rates escalated to an astonishingly high 117 percent last year. All of these rates are higher than the State of Washington's usury rate of 25 percent.

As if these interest rates were not bad enough, many pension advance companies require their customers to sign complex documents whose terms can only be described as deliberately deceptive. Typically, customers are required to take out life insurance policies naming the pension advance company as the beneficiary.

Most consumers simply do not realize that the rates that they are paying are so high. For example, one of my constituents did not understand that he was paying a rate of 54 percent on his pension advance until his tax preparer told him that the deal just did not look right and advised him to contact the Maine Bureau of Consumer Credit Protection.

Second, many of these consumers are financially vulnerable and desperate for cash. These pension advance companies exploit this desperation. They also use flashy, aggressive, and misleading advertising to encourage quick and uninformed decisions.

It is extremely troubling that some companies aggressively target the patriots who have served our country, our veterans. They use websites displaying the uniform and wrapped in red, white, and blue, and run ads in military magazines. Federal law prohibits the assignment of pensions of enlisted military retirees, but pension advance companies too often ignore this prohibition, just as they ignore Federal and State laws requiring clear disclosure of interest rates on consumer loans and just as they ignore State usury laws that set a ceiling on the amount of interest that can be charged on consumer loans. Pension advance companies claim that these laws simply do not apply to them, arguing that their products are not consumer loans or assignments, but simply advances.

Today's hearing builds on this Committee's ongoing investigation into pension advances and continues our efforts to protect America's seniors from shadowy schemes that threaten their financial security. I hope that any retiree considering a pension advance will think carefully before taking that step and will seek advice on other ways to obtain financial assistance.

I look forward to hearing the testimony of all of our witnesses today.

With that, I would like to turn to our Ranking Member, Senator Claire McCaskill.

**OPENING STATEMENT OF SENATOR
CLAIRE MCCASKILL, RANKING MEMBER**

Senator MCCASKILL. Thank you, Senator Collins, Chairman Collins.

Retirement security and consumer protection are both large parts of this Committee's focus and mission under the leadership of Chairman Collins. Today's hearing presents an opportunity to

look at an alarming practice that intersects both of these Committee priorities.

The defined benefit pension plan is considered the gold standard in terms of retirement security. Although it is not as popular as it once was, those people retiring today with a defined benefit plan are incredibly fortunate. They get a fixed payment for life, so they cannot outlive their savings, and they did not have to figure out how to invest this money or how much to put aside, so they are saved from the burden that they may not have had the financial wherewithal to adequately care for themselves throughout retirement, nor do they have to worry about an economic downturn happening right before they cash out.

Willie Sutton explained that he robbed banks because that is where the money is. Well, these seniors with defined benefit plans are similarly ripe targets for a different kind of crook. These fraudsters offering pension advances are undermining all the advantages of these defined benefit plans, making what had been a secure retirement suddenly very unsettled. Worse still, these folks are targeting some of the pillars of our communities—our firefighters, our teachers, our veterans.

They are also finding unwitting victims among elderly investors looking for a safe investment at a time in their lives when they are looking for ways to earn a little bit of money without taking a large financial risk. It truly is an impressive scam that is able to take advantage of both sides of the financial transaction, the investor and the pensioner, but that is what these pension advance schemes have been doing.

Today, we will hear firsthand from victims of these schemes as well as those in the public sector and consumer protection groups about their efforts to combat this problem. This Committee is also investigating the bad actors behind these schemes, and I commend Chairman Collins for using this Committee's investigative and oversight powers to go after these folks.

Right now, there simply is not enough being done here, because it is a legal gray area. While we hear from our Arkansas witness about all the good work she is doing down there to protect the public, unfortunately, once she catches these guys, she cannot prevent the same bad actors changing their corporate name and putting down roots somewhere else to find new victims in other states.

There is only one State in the country where pension advance companies are not trying to take advantage of teachers, veterans, and firefighters, and that, I am proud to say, is in my home State of Missouri. I want to commend the work of our State Treasurer Clint Zweifel, who joined Republicans in the Missouri General Assembly to push for this legislation last year. This bill received enormous bipartisan support with no one testifying against it.

Among those who spoke on the bill is one of our witnesses today, Maria Walden, from the Public School and Education Employee Retirement Systems of Missouri, the largest defined plan in our State and one of the best plans in the country. She will talk about the legislation banning pension advances and the protections that cover her members.

I am also pleased to say that, thus far, our State has not had any reports of pension advance companies coming to Missouri since

the bill was signed into law. I am hopeful other states will follow Missouri's lead and protect those public employees who have spent their careers protecting us.

Once again, I want to thank the Chairman for calling this hearing and for our witnesses for joining to discuss this problem today. I look forward to your testimony. Thank you.

The CHAIRMAN. Thank you very much.

We are now pleased to turn to our panel of witnesses. First, we will hear from Dr. and Mrs. Louis Kroot. He is a retired Navy physician from Kentucky, and he and his wife, Kathie, will share with us their personal experience in selling their pension to a pension advance company.

Next, we will hear from Stephen Lord, the Managing Director at the Government Accountability Office, who will discuss GAO's investigation of the pension advance industry.

We will then hear from Kaycee Wolf from the Arkansas Securities Department, and I would like to call on our colleague, Senator Cotton, for the introduction of Ms. Wolf.

Senator COTTON. Thank you. I am pleased to introduce Kaycee Wolf, who will testify about the work she and her colleagues did fighting pension advance fraud in Arkansas.

Kaycee is a University of Arkansas Law School alum and has helped to protect Arkansans for the past five years as an attorney with the Arkansas Securities Department. Her work with the Securities Department was not about preventing sophisticated parties from entering mutually beneficial agreements. Instead, as we will hear, her team spent thousands of hours successfully fighting outright fraud and blatant misrepresentation of contracts.

Kaycee, thank you for appearing before us today. It is an honor for this Committee and Arkansas to have you here. Arkansas and I are proud of the work you and your team have done and hope it can be a model for the entire country.

The CHAIRMAN. Thank you.

We will then hear from Stuart Rossman, the Director of Litigation at the National Consumer Law Center, and I understand that Senator Warren would like to introduce this witness.

Senator WARREN. Thank you, Chair Collins.

I am pleased to introduce one of our witnesses today, Mr. Stuart Rossman. As you said, Mr. Rossman is the Director of Litigation at the National Consumer Law Center in Boston, Massachusetts.

I just want to say about Mr. Rossman, he is deeply knowledgeable about the law, but he also has a very thorough understanding about what is actually happening to people across this country. In other words, he knows his stuff, and we are lucky to have him here today.

Thank you, Mr. Rossman.

The CHAIRMAN. Thank you.

Finally, I want to ask Senator McCaskill if she would like to add anything. You mentioned our final witness on this panel, Maria Walden. If you have anything you would like to add to what you said in your opening statement.

Senator MCCASKILL. Well, as I mentioned in my opening statement, she is the Director of Legislation and Policy for the Public School and Education Employee Retirement Systems, and it is one

of the finest pension programs in the country. I like to remind our teachers in Missouri that we are not high on the scale when it comes to salaries, but when I was an auditor, we were number one in the country in terms of pension benefits. Are we still number one?

Ms. WALDEN. We are very close, Senator.

Senator McCASKILL. Yes. I know that we have one of the finest pension programs for people on the front line of every social ill that faces our country. I think we forget that it is teachers that we are asking to do so much more than teach in so many places in our country today, so well deserved, good pensions, I think, are something that we all need to in this country realize is an important part of financial security.

I am proud of your organization and so glad that you are here today. Thank you.

The CHAIRMAN. Thank you all for joining us. We look forward to hearing your testimony, and we are going to start with Dr. and Mrs. Kroot.

**STATEMENT OF LOUIS KROOT, M.D., CMDR,
USN, RETIRED, LEXINGTON, KENTUCKY**

Dr. KROOT. Chairman Collins, Ranking Member McCaskill, distinguished Senators on the Committee, thank you for the opportunity to appear before you today and to testify about our family's experience with pension advances. We are here today as husband and wife, because in our 34 years of marriage, we have always operated as a team and ours is a shared cautionary tale.

For 22 years, I served our country in the Navy as a physician. When I retired as Commander, I intended to continue to work as a doctor, and I did so as an ER attending physician in several hospitals. Today, I continue to work as an ER attending at a VA hospital in Lexington, Kentucky.

My wife, Kathie, has been at my side throughout most of my career and has done incredible work as an advocate for organ donation and as a dedicated volunteer at our synagogue.

When I left the military, I planned to continue to provide for our family through work and through my military pension, but due to a perfect storm of unfortunate events, we were left with debt spiraling out of control. First, we received bad tax planning advice in moving funds from a 401(k) and incurred around \$100,000 in unexpected fees and penalties.

Second, we suffered over \$10,000 in home repair from our basement flooding while our house was in escrow.

Third, we incurred an enormous amount of medical expenses when it became necessary for our adopted special needs daughter to be repeatedly hospitalized for a serious psychiatric medical condition.

We were financially desperate at that time and did not know where to turn. We had incurred an extraordinary and unexpected debt. We were looking for any way to pay off this debt.

We had seen advertisements in military magazines for companies that gave lump sum payments for military pensions. We contacted one of these companies, Structured Investments, which was doing business under the name of Retired Military Financial Services,

and they offered to provide us with a lump sum payment against my future pension payments. We jumped at the opportunity. We felt that the lump sum payment structured investments offered would allow us to pay off much of our existing debt.

We understood at that time that we were taking an advance on moneys that were due from future retirement payments. We understood that there would be fees for this service. We did not realize how expensive it was going to be. We simply did not get out the calculator or see it as a loan. We were desperate and we panicked.

In fact, we realized we had been taken to the cleaners by Structured Investments. We were shocked when the complex math in the contract was broken down by a reporter and explained to us that we were paying over 30 percent interest on our advance. The paperwork we signed did not disclose the interest rate. It did not break down how the numerous fees we were paying to Structured Investments raised our interest rate.

An example of these fees are the thousands of dollars we paid for a life insurance policy on me, required for the advance by Structured Investments, listing Structured Investments as a beneficiary, and we needed to continue to pay this two years after the loan was paid off because we needed consent from them in order to stop the insurance policy.

We ended up paying more in interest with our pension advance than we would have paid if we had simply paid off the interest over time on our existing debt load.

Moreover, we learned after the fact that there were alternatives we could have used to reduce our debt load while avoiding paying the high fees charged by Structured Investments.

We have fully paid off Structured Investments. Looking back on our experience, it is clear that we made a mistake. We should have been more aware of what we were buying. We also want to make clear that we accept that we signed the contract and we accept responsibility for that. We should have known better.

As we said, ours is a cautionary tale and we want to make two points to those who may find themselves in a situation similar to ours. First, you have other options. You should explore those options and should resist the urge to reach for easy, immediate cash. Second, had we known what we now know, we never would have taken out the pension advance from Structured Investments with their unreasonable fees.

We wish we could do everything over again and make better decisions. It is our fervent hope that by testifying today, we can prevent other individuals from making the same mistake we did.

Thank you again for the opportunity to be here and we look forward to your questions.

The CHAIRMAN. Thank you very much for sharing your personal experience. When people hear that a physician can be tricked by these convoluted contracts with the lack of disclosure, I think it is a cautionary tale to others, and by coming forward and being willing to share your story, I believe that you will save others from making the same mistake, so I very much appreciate your sharing your story with us today.

Mrs. Kroot, do you have anything you would like to add from your perspective?

Mrs. KROOT. No. We should have known better. I am a math major and I should have done the math.

The CHAIRMAN. Well, I think the fact that these contracts could fool a physician and a math major probably tells you all you need to know about the lack of disclosure, the deception in the contracts, the hidden fees, the charges, and I think we will hear next from Mr. Lord that based on GAO's investigation, your experience is not at all uncommon, unfortunately. Thank you.

Mr. Lord.

**STATEMENT OF STEPHEN LORD, MANAGING DIRECTOR,
FORENSIC AUDITS AND INVESTIGATIVE SERVICE, U.S.
GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, D.C.**

Mr. LORD. Thank you, Chairman Collins, Ranking Member McCaskill, and members of the Committee. I am really happy to be here to discuss our June 2014 report on pension advances and the status of agency efforts to implement our really important recommendations. This is a really important issue, because, as highlighted by Dr. Kroot, there are companies out there using aggressive marketing techniques to target those who are vulnerable and those in urgent need of cash.

Today, I would like to discuss three issues. First, the number and types of companies marketing these types of products. Second, I would like to discuss how the terms of these products compare to other similar financial products, such as consumer loans, and finally, I would like to clarify the role of the CFPB and the Federal Trade Commission in overseeing these activities.

First, regarding the overall numbers, at the time of our review, we identified 38 companies that offered lump sum pension advance products. While 18 of these companies were located in California, the remainder were spread across several other states and virtually all of them marketed these products on a nationwide basis through websites. I think that is one of the key points we revealed through our work, as well, and we found—interestingly, we found that at least 30 of these 38 companies were affiliated in some manner with each other, and if you could turn your attention to, I called this our “connecting the dots” chart. This is not obvious from a consumer perspective, because if you make phone calls or conduct website research, you are initially led to believe there are 38 companies out there operating independently. Yet, by virtue of our undercover phone calls and follow-up research, we were able to identify connections between these entities.

For example, Dr. Kroot, the two companies he dealt with are exhibited in the upper left-hand corner. That is Company four, as well as Company five. Structured Investments is Company four, and Retired Military Financial Services is Company five. It was obvious—it was not obvious to him at first blush that they are related, but through our work, we were able to identify these connections.

The bottom line is the lack of transparency can make it difficult to file a complaint if you are a consumer, because you really do not know who you are dealing with. Also, if you are considering making an investment in one of these companies, it is difficult to do

any research to assess the reputability of these vendors before making a financial decision.

A second key point is regarding the terms of these deals. As highlighted by Dr. Kroot, the terms do not compare favorably with other similar financial products. How did we determine this? We analyzed 99 offers provided by six companies in response to our undercover phone calls. They did not know we were GAO calling. They assume we were a consumer interested in investing in these, and we found, first, these products had effective interest rates that were significantly higher than the legal limits set by states on consumer credit, called the State usury limits, and these rates range from 27 percent to 46 percent interest rates. As you can see, that is considered really high.

Second, we also found that these lump sums offered through these companies were about half of what you would get through a defined benefits pension provider. If you were to get it directly from your pension provider, it averaged about half. The percentage was 46 to 55 percent, so again, you could see these terms were not really that attractive from a consumer perspective.

In terms of disclosure, as also highlighted by Dr. Kroot, we found that of the 38 companies, most did not disclose an effective interest rate, so it is really difficult to assess what type of rate is being provided.

The bottom line of all our analysis, that these were not a good deal for consumers and the companies appear to be operating in a regulatory gray area.

There is some good news here. In terms of our report recommendations, CFPB has taken some recent enforcement action. In August of this year, it filed a complaint against Pension Funding LLC. That is one of the entities Dr. Kroot was dealing with, as well as one other related entity. They also have released, CFPB and FTC, some consumer advisories in this area, so it is encouraging that the regulatory agencies are taking some regulatory and enforcement action, as we recommended in our report.

This concludes my prepared remarks and I look forward to answering any questions you have later. Thank you.

The CHAIRMAN. Thank you very much.

Ms. Wolf.

**STATEMENT OF KAYCEE L. WOLF, STAFF
ATTORNEY, ARKANSAS SECURITIES DEPARTMENT,
LITTLE ROCK, ARKANSAS**

Ms. WOLF. Good afternoon, Chairman Collins, Ranking Member McCaskill, Senator Cotton, and other distinguished members of the Committee. I appreciate the opportunity to speak with you today about the investigation that the Arkansas Securities Department conducted against one such pension advance company, Voyager Financial Group, or VFG, and its owner, Andrew Gamber.

What we found in our investigation is that although VFG was located in Little rock, Arkansas, it used a network of individual agents who were located throughout the United States as well as various websites with multiple domain names, different company names—that was mentioned by the GAO—under this one company,

and so, it seemed like there were several different companies out there and it was all under the umbrella of VFG.

Through these websites, they would try to locate pensioners who were interested in selling the right to their pension payments for a lump sum, and they would also look for buyers who were interested in paying a lump sum amount for a steady return on their investment. I believe some of the interest rates promised were between seven and nine percent, which was more than what the market was offering.

Some of the investors also found out about this product through agents with whom they had already a professional relationship.

VFG facilitated everything for the transactions on both sides. The pensioner and the investor never spoke and never dealt directly with each other. They always dealt with VFG and VFG's agents.

Once a pensioner was located, VFG would place the pension up for sale and they would help the pensioner establish an escrow account. The pensioner would then submit paperwork provided by VFG to their pension company and the pension company would be instructed to forward the pension amount to an escrow account. In turn, once that money was in the escrow account, it was then directed to be forwarded to the investor each month.

This is an important distinction, because at no time was the actual pension assigned. At no time did the pensioner relinquish control over his pension, and at no time did the investor have control over that pension. The reason why this is important is because the number one complaint that we received was the failure of VFG and its agents to disclose the redirect risk, and what I mean by this is because the pensioner maintained control of his account, because especially with military pensions it is illegal to assign away your pension, they could direct the escrow company to—or direct the pension company to redirect the funds back to a different account and no longer to that escrow account. If the pensioner got into financial trouble and had to file bankruptcy, the pension would get caught up in the bankruptcy and would no longer go to the escrow account, so from the investor perspective, they were no longer getting that monthly return. They were never warned that this was possible.

The problem is, that a lot of the investors we saw were senior citizens looking for a safe, low-risk investment, and that is how this product was packaged to them, that this was safe. You would get a seven to nine percent return on your investment each month, and some of the investors were told it was government insured, which was patently false.

Another miscommunication and blatant, outright lie from VFG was the failure to disclose the fees involved in these type of products, and you have heard some about that. VFG failed to disclose a fee breakdown on both sides of the transaction. A pensioner never actually knew what their pension sold for lump sum, and on the other side of the table, an investor never knew how much of that lump sum they paid actually went to the pensioner. They were told VFG would receive a fee, sometimes an administrative fee is how it was couched, and the investors were told, but most of your

money is going to go to the pensioner, and that ended up not being the case because there was a failure to disclose the fees.

What happened in reality was that VFG would receive the lump sum payment from the investor. They would cut themselves a rather large commission off the top. Then they would forward all of the commissions on to the individual agents. I saw one contract that had as many as six individuals receiving commissions off of one sale.

Then they would pay out administrative fees, such as the escrow fee and other various fees, and then along down the line, finally, the pensioner would receive a much smaller lump sum amount than what it was purchased for, and again, there was no detailed disclosure about that to either side, either the investor or the pensioner.

Unfortunately, with the Arkansas Securities Department in its name, we are a securities regulator, so we were looking at this from the investor side and we were very limited in the type of regulatory action we could take. Fortunately for us, Arkansas State law is the risk capital test to be able to analyze it as an investment contract, and we determined that it was under our State test, and, therefore, it was a security, so we were able to take enforcement action against VFG. However, the risk capital test is not the analysis in every State, nor is it the analysis federally, so it does vary State to State whether this would be considered a security.

Although we were able to shut down VFG, it is unfortunate that Mr. Gamber has not learned his lesson, because it seems that he has continued to flout authority and has developed other companies and looks to be doing the exact same thing, and we currently have an ongoing investigation against him and some additional companies.

So, I want to conclude by thanking you for having me here to talk about our investigation and I look forward to any questions you have.

The CHAIRMAN. Thank you very much.
Mr. Rossman.

**STATEMENT OF STUART T. ROSSMAN, DIRECTOR
OF LITIGATION, NATIONAL CONSUMER LAW CENTER,
BOSTON, MASSACHUSETTS**

Mr. ROSSMAN. Thank you, Chairman Collins and Ranking Member McCaskill, Senator Warren, members of the Special Committee on Aging. I appreciate being invited to testify today regarding pension advances and to report on recent cases involving military pension assignments where I have been counsel of record on behalf of disabled and retired veterans of our armed forces.

As Senator Warren noted, I am the Director of Litigation at the National Consumer Law Center. For the past 16 years, I have been responsible for coordinating and litigating cases at NCLC on behalf of income- and age-qualified individuals, and I testify today on behalf of NCLC's low-income and elderly clients.

In May 2003, NCLC was researching consumer scams perpetuated on active military personnel and ultimately issued a report, but while we were investigating that report, we came across a separate issue. The Judge Advocate General Corps felt that some of

the greatest abuses that they were seeing concerned the solicitation of retired military personnel to gain access to their pension payments. What we discovered was that companies and individuals were targeting veterans' benefits, usually by offering those up-front cash payments in return for several years of the veterans' monthly payments.

Veterans receiving retirement and disability benefits are highly attractive targets for financial exploitation. I like to say that guaranteed streams of income are sort of like honey to bees. They are just naturally attracted to the fact that the money is there, and particularly where we are dealing with vulnerable populations that are relying upon their pensions for their safety net. Retirement and disability benefits are regular, dependable, and long-term, and it is very easy to automatically transfer the funds each month. In the military setting, it is done by way of allotments through the Defense Finance and Accounting Services.

Veterans are also easy to reach through affinity marketing and advertising in targeted publications. More and more, it is now proliferated through the Internet. The companies engage in what we call lead generators. When Dr. Kroot was contacted by RMFS, that was a lead generator which then turned him over to Strategic Investments, which was, in fact, the lender, so they are actually serving as the agents, as we previously heard.

And, finally, veterans may have perceived themselves to have—they usually have heavy debt burdens or poor credit as a result of the financial strains of their deployment and their frequent relocations.

I want to talk about a specific case that we had. We represented Darryl Henry, who retired as a Chief Petty Officer after 20 years of military service and had both combined pension and disability payments of over \$1,000 a month. When he went to purchase a home, he found out that because of the debts that he had had when he left the service, he did not qualify for a prime loan to purchase, and in trying to find a better option, he found an advertisement for Retired Military Financial Services, the same company that reached out to Dr. Kroot. They then referred him to the Structured Investors Company, once again, the same company, and I have included the ad as part of my testimony, and he got a lump sum set of payments, which if he as a Chief Petty Officer had figured out what the actual interest rate was, it was 28 percent, which is far above the California usury law would permit.

I do want to point out that we keep on pointing out on the usury laws. Unfortunately, only approximately one-third of the states in our country have usury laws at this point, so the fact in California, he would have been protected under those circumstances, but in many states, that would not have been true.

Mr. Henry was told that since the transaction was not a loan, his credit score did not make any difference. They actually used it as a way of selling it to him that he could improve his credit score by paying down his loans.

Mr. Henry got in touch with us and we ended up bringing suit on behalf of him and other enlisted personnel in a case in California in Superior Court. We alleged that it was a contract that violated the usury statutes and was also a violation of the Truth in

Lending. We also indicated that it was in violation of the Federal statutes both from the Department of Defense and Veterans Administration that prohibit assignments, putting them in a rock and a hard place. If they said it was not a contract and it was an assignment, if it was not an assignment, it was going to be a contract, and then if it was, in fact, a violation of either of those statutes, we claimed it was a violation of the California consumer protection statute.

We actually tried the case in May 2011, and in August 2011, the judge issued his rulings, finding that, in fact, it was a violation of DOD and Veterans Administration regulations and, therefore, was a violation of the California consumer protection statute, and awarded our clients \$2.9 million worth of damages.

Unfortunately, in the interim, the California Division of Corporations had shut down SICO, mainly because our litigation had stopped their flow of income, and that subsequent to our getting the judgment against SICO and the two principals, they all filed for bankruptcy and received bankruptcy protection. Interestingly enough, one of the reasons why they do not want these to be contracts is because as contracts, they would be dischargeable as unsecured debts. Yet once we got the judgment against SICO and the individuals, they sought the protection of the bankruptcy courts to protect having to pay the judgments.

Our client, Mr. Henry, ended up getting nothing out of the deal because he had paid off his loans already. A number of individuals who had been in the process of paying off their loans at least could stop at that point and we were able to save them funding.

Mr. Henry told me that at least he stopped this company from doing these bad transactions. Unfortunately, and quite honestly, my clients here are the heroes here. The lawsuit that Mr. Lord was just referring to was filed a couple of weeks ago by the Consumer Financial Protection Bureau along with the New York Department of Financial Services was against a company called Pension Funding, and three of their managers were named as defendants in those suits, one of whom was Mr. Steven Covey, who used the bankruptcy laws in order to get out of the debt that he owed in my case back in 2011. The Pension Funding Group does not do military loans. He apparently learned enough of that lesson, but fortunately, the regulators in that case were able to step forward.

I think the bottom line answer to this is that we certainly need full disclosure. We need to ensure that the usury laws are obeyed. We need to make sure that the various Federal and State agencies are enforcing the law. Individuals have the ability to use consumer advocates in order to protect their rights, but ultimately, preventing this from the very beginning is the best way to deal with this problem. There are many, many other alternatives that are much better than these loans.

The CHAIRMAN. Thank you very much.

Ms. Walden.

**STATEMENT OF MARIA CAUWENBERGH WALDEN, DIRECTOR
OF LEGISLATION AND POLICY, PUBLIC SCHOOL
AND EDUCATION EMPLOYEE RETIREMENT SYSTEMS
OF MISSOURI, JEFFERSON CITY, MISSOURI**

Ms. WALDEN. Chairman Collins, Ranking Member McCaskill, and other distinguished Committee members, my name is Maria Cauwenbergh Walden. I am the Legislative Director of the Public School Retirement System and the Public Employee Retirement System of Missouri.

There are over 575,000 Missourians that are now protected under the statewide law ban that prevents pension advances in the State of Missouri. Since 1946, PSRS/PEERS have worked to provide strong, stable, secure retirement benefits to over 250,000 Missouri public school teachers and public education employees. We pay more than \$2.5 billion annually in benefits to over 82,000 retirees. We continue to be a financially stable defined benefit plan for our members. We have over \$37.4 billion in assets. We are the largest public retirement plan in the State. If you combine all other 85 retirement plans in the State, we have more assets and more membership than all other.

The quality of our plan design, as Senator McCaskill mentioned, has been nationally recognized by the Public Pension Coordinating Council. We are governed by a seven-member board of trustees. That system is an independent trust fund. The board is charged by law with the administration of those systems. Due to the independent nature of our trust fund, staff is limited in the ability to support matters of which the board have not yet taken an official position. The comments that I am making today are solely for informational purposes and require that the systems remain neutral on this issue.

As the Chairman indicated, pension advances are financial instruments where an individual with a pension receives an up-front lump sum payment in exchange for contracting away a portion of that individual's pension payment.

During the fall of 2013, there were several national media reports on predatory practices of pension advances across the Nation. They started in Missouri in the boot heel and they worked their way up to Jefferson City. The news reports during that time stated the monthly payments made by the borrower can be subject to effective interest rates of 27 to 106 percent. In some cases, as was mentioned earlier, borrowers are required to take out a life insurance policy and name that pension advance as the sole beneficiary to ensure payment.

In September 2013, State Treasurer Clint Zweifel went on record as being very concerned about the predatory practice of pension advance companies in Missouri. In an effort to protect Missourians, he established the Pension Advance Portal on his website to allow public pensioners the ability to report any concerns or problems they had faced.

That same month, the systems held several internal meetings to discuss the impact of those pension advance companies on our own members. Any time we see any firm or organization that might attempt to take advantage of our members, we become concerned and

we work toward ensuring that our members are aware of any potential challenges or pitfalls they might face.

In light of the media reports of these type of services, we really took a proactive stance and updated our website to educate our members, and we also informed them of the current statutory provisions that were in place that would protect them. In addition, management notified our staff regarding pension advances to ensure that retirees would be informed of this type of practice during any of our educational meetings that we hold throughout the State.

One of the challenges the system faced was educating members and the public on the statutory protections that were already in place. PSRS/PEERS members are covered by an anti-alienation and an anti-assignment provision in statute. As you are aware, an anti-alienation clause is a provision in the governing documents for an arrangement such as a trust as ours that specifies that the beneficial or equitable owner of that property held in that arrangement cannot transfer the interest to a third party. Those provisions prevent PSRS/PEERS from paying benefit payments to anyone other than the retiree or from accepting an assignment of the retiree's benefit payment.

Therefore, by statute, we are prohibited from paying benefit payments directly to a pension advance company, and many of our statewide plans provide similar protections in their statutes. However, after receipt of the benefit payment from PSRS/PEERS, a retiree can use his or her pension benefit in any manner. Therefore, a PSRS/PEERS retiree would be able to enter into a contract with a pension advance company as long as the contract did not require PSRS/PEERS to make that payment to anyone other than our retiree.

On January 7th, at the request of State Treasurer Zweifel, Representative Tony Dugger and Senator Mike Cunningham sponsored House Bill 1217. It prohibited pension advances from being sold in Missouri to public pensioners. House Bill 1217 specified that the right of a person to a public employment retirement benefit cannot be transferred or assigned at law or in equity. A pension assignee would be prohibited from using any device, scheme, transfer, or other artifice to evade the applicability and prohibitions of this provision. Any contract or agreement made in violation of these provisions would be considered void and all sums paid and collected by the assignee would be returned.

During the legislative process, proponents of House Bill 1217 testified that the bill served as a good consumer protection for all Missouri public pension retirees. Proponents testified that the bill prohibited a person's Missouri public employment retirement benefit from being transferred or assigned to a pension advance service and would keep the benefit for what it was meant to be, a retirement benefit. The bill created a ban on pension advance lenders and would ensure that pensions earned by teachers, our firefighters, our police officers, and other public servants would be protected from such a practice.

One of the reasons cited for the need of this legislation was to protect all of Missouri's public pensioners, especially any of those members whose plans might not have an anti-assignment provision.

We had five groups that testified in support of the provision. There were no groups that opposed the legislation. It was approved by the Governor on July 9, 2014, went into effect that August. Since the implementation of this law, we are not aware of any retiree—of our retiree—who has been sold an income stream for all or part of his pension. We also have not received a request from a retiree to make a payment to a pension advance service or into an escrow account.

Thank you so much for the opportunity to testify today. I look forward to answering any questions you may have.

The CHAIRMAN. Thank you very much for your testimony.

Dr. Kroot, what we have learned from your experience, from the testimony of Mr. Lord and Mr. Rossman, is that veterans are frequently targeted, probably because it is known that military retirees have pensions the way other public employees do, and so there is a regular stream of income. You mentioned that you saw an ad in a military magazine for one of these pension advances, and I want to put up a couple of examples of the typical ads that we are finding as part of our investigation, very patriotic looking.

You also initially dealt with an organization that was called Retired Military Financial Services. Did that give you a sense of comfort that this was a legitimate offering?

Dr. KROOT. Yes, it did, Senator.

The CHAIRMAN. How long did you sign away your pension—for how long a period did you agree to sign away your pension?

Mrs. KROOT. Senator, it was for eight years. If we failed to make a payment, then we would automatically go into a 10-year repay.

The CHAIRMAN. Eight years is a very long time. Can you tell us what portion of your pension that you agreed to give up for those eight years in return for the lump sum, approximately?

Mrs. KROOT. Approximately? Currently, we are receiving a little over \$3,000, like, \$3,015 in retirement benefits. During the time that we were paying Structured, we would get a check from Structured every month for about \$300. I would say between \$2,500 and \$2,700 was taken each month.

The CHAIRMAN. Instead of getting your military pension check each month of about \$3,500, you instead were getting \$300?

Mrs. KROOT. Yes, ma'am.

The CHAIRMAN. That must have been so difficult for you.

Ms. Wolf, I want to commend you for being very aggressive in closing down Voyager's operations in your State. In my past, I spent five years as the chief regulator overseeing the Bureau of Insurance, Consumer Credit Protection, Banking, and the Security Division. I was very interested—in the State of Maine, I am talking about—I was very interested to hear you talk about not only the effect on the military retiree or the person giving up the pension, but on the investor on the other end of the transaction. You looked at it as if it were a security, whereas the Consumer Credit Protection Bureau in my State would look at it as a consumer loan.

My point, however, is this. You were able to close down this bad company in Arkansas and protect the people of Arkansas from this bad actor, but you pointed out he simply set up shop in another State. Does that mean that we need to have some sort of Federal regulation or legislation in this area?

Ms. WOLF. Well, I certainly—it is very limiting, what we can do as a securities regulator, because you are right, we were looking at it from the investor standpoint, and unfortunately, with the nature of Mr. Gamber, and it sounds like from other types of pension companies like this, they do shut down in one State, and although Mr. Gamber, we believe, is still in Arkansas, he has formed companies in Texas and seems to be doing the exact same thing one State over, and that seems to be quite common.

I cannot speak to Texas securities laws as well as other states' securities laws, and so strictly from a security standpoint, it varies State to State, and if there is not some type of overreaching protection otherwise in place, then we are limited to the action we can take.

The CHAIRMAN. Obviously, Missouri has taken care of this, the only State in the Nation, by banning this kind of practice when it comes to public pensioners, but there are a lot of private sector people, as well. Although defined benefit plans have greatly declined, there are still some. In Missouri, Ms. Walden, is there any protection for those who are receiving private pensions?

Ms. WALDEN. Not that I am aware of. The State law only addressed public pensioners.

The CHAIRMAN. Mr. Lord and Mr. Rossman, I want to give you the opportunity to give us your recommendations on whether or not, given the ease with which people can move from State to State, the bubble chart that Mr. Lord put together showing the interlocking companies. We will start with Mr. Lord. What do you think Congress could do to help protect people in this area?

Mr. LORD. Well, there are a couple things. It has been a long unsettled question on whether these constitute consumer loans or not and, therefore, should be subject to the Truth in Lending Act disclosure requirements. If there is some way to clarify that, number one.

Also, just in terms of transparency, you could require in some respects more reporting about who these entities are or just have some sort of minimum reporting requirements that help enhance the transparency in this area. It is a very murky area. I know they are doing this—they structure these products deliberately by design so they fall outside some of the existing statute, but from a consumer perspective, it is simply—they do not have a lot of visibility.

I think there is a clear Federal role in consumer education. There is a Financial Education Literacy Commission. It is vice chaired by CFPB. I think they could take additional steps to educate the consumer. Obviously, consumers are ultimately responsible for their own financial decisions, but I think they need to better understand the risk of these transactions going into them.

The CHAIRMAN. It is clear that the companies are taking advantage of this murkiness, and the fact that in one State it is going to be treated as a security in order to get at them and in another as a consumer loan shows you some of the problems.

My time has expired, so Mr. Rossman, I will get to you on the second round.

Mr. ROSSMAN. Fair enough.

The CHAIRMAN. Senator McCaskill.

Senator McCASKILL. Thank you.

Ms. Walden, one of the more disturbing parts of these schemes—I know this was applicable to your members—is the idea that your pension members do not have Social Security.

Ms. WALDEN. Correct.

Senator McCASKILL. Even those that do are subject to the complicated rules under the windfall elimination provision, so for these people, selling off future income is even more dangerous because they do not even have Social Security to fall back on. How does this work with your plan? If someone signed up for a pension advance, assuming they were still legal in Missouri, would they typically, any of your members, any of them have Social Security income they could rely on?

Ms. WALDEN. Some of them do. It depends on what they did prior to teaching. It also depends on what they do during the summer months. As you know, most teachers work year-round, but at the same time, they have a little bit of a break during the summer months. They can earn some Social Security benefits.

Senator McCASKILL. Are there any options that your pensioners have if they needed a substantial sum of money? Can they take a lump sum at any time from this system? Is that allowed in Missouri?

Ms. WALDEN. The only allowing that we have is if a member, before they retired, we have an option called a partial lump sum. That allows a member to take a portion—it is either a 12, a 24, or a 36-month portion—and what it basically does is give them that pension for those years that they take and it reduces their overall—actuarially reduces the pension they receive, but they do get a lump sum, so if you have an individual who wants to pay off their house before they retire, they will work an additional three years and get that 36-month partial lump sum so they can pay off their house, and it is actuarially reduced, so it is a dime-for-dime transaction. There is no enhanced benefit for the system at all.

Senator McCASKILL. If something occurred unexpected after they had made their decisions about retirement, there is no options for them, perhaps, except something like these scam artists.

Ms. WALDEN. They could potentially—in Missouri, it is not allowed at all for our teachers due to the law that was passed. Prior to that, most of our teachers will call in. We have an unbelievable member education system, and we touch teachers every day. The call volume is unbelievable. They call us when they have any kind of question, and what is great about it is we have that type of relationship with the teachers. Our teachers give 14.5 percent contribution rate. They love their retirement plan and they want to make sure what they are doing is protected, and so we get calls and that is where part of our education process was also to educate our staff, to let them know if they received any calls regarding this to, one, inform them of the problems that could result from it, such as we have seen earlier today.

Senator McCASKILL. Right, with Dr. Kroot.

Mr. Rossman, these products remind me a little of life settlements or payday loans in the sense they allow a consumer who is desperate and feels pressure and needs cash in exchange for promises of something that would happen in the future. These indus-

tries are regulated in some capacity, although there is certainly a concern with both products, but there is a market out there for people who need a large sum of money. Do you think pension advances should be regulated like those products for people who really need the money, with some sort of interest rate cap? I mean, are we making a mistake by outlawing these as opposed to just making them behave like moral human beings?

Mr. ROSSMAN. That would be a good start. I think that, first of all, you have to distinguish between the payday lenders and the other products, predatory products, that are out there. What is unique about these pension advance companies, and it was a great surprise to us, was that they are much smaller in size. Many of the other predatory lenders are now publicly held companies, and these were pretty much thinly capitalized corporations that had absolutely no skin in the game. What we found out with each of these entities, and I do not know if Mr. Lord found the same experience, was that they only loaned out what they were able to get in from investors, so the individuals who were running the show——

Senator McCASKILL. That is like a bookie.

Mr. ROSSMAN. Yes, exactly.

Senator McCASKILL. They are just taking the “vig.”

Mr. ROSSMAN. They are just taking the “vig,” exactly, and, so, the other issue——

Senator McCASKILL. I do not know how I knew that word, I just want to say for the record.

I just want to put that on the record. I do not know where that came from.

Mr. ROSSMAN. I come from Boston, so I know exactly what you mean.

Senator McCASKILL. You know exactly what it is.

The CHAIRMAN. I do not. I come from Maine.

Mr. ROSSMAN. I think that the other thing that is significant is that most of the predatory loans that we usually see out there are in the \$5,000 to \$10,000 range. As I think Mr. Lord said, and we found certainly in our reports, we were seeing averages of \$45,000 to \$50,000 and upwards over \$100,000, which is a much bigger sum.

Look, we understand that individuals run into difficult times financially, like the Doctor was testifying. There are—certainly each—in my case in the military, each of the branches of the military have relief funds to help people in cases of emergency. There is also the possibility to use the guaranteed stream of income in order to secure a loan from a more responsible and regulated source. You could go to a credit organization or a savings and loan to be able to take out the loan and then secure it. The key here, though, is that you are controlling your funding, and that is not the case with these companies. You literally lose control over your pension over that time.

I thought that the Doctor was absolutely correct, and we had found the same situation, that if, in fact, you tried any way to get yourself out of the transaction, you were penalized with a two-year addition. That is two years, in their case, of almost \$3,000, so looking at a \$25,000 penalty. It is outrageous. It is unconscionable. It is a sharp practice that really cannot be tolerated.

So, I do not know that regulating that makes a great deal of sense. I think that providing other alternative products are important.

The last thing I want to just add on this, Senator, is the fact that we are dealing here with an Internet product now. It is very different than when we started this back in 2003.

Senator McCASKILL. Right.

Mr. ROSSMAN. You know, you are saying they went from Arkansas to Texas, half the time, you have no idea where this company is located.

Senator McCASKILL. Right. This is an IP address.

Mr. ROSSMAN. Exactly.

Senator McCASKILL. Right. Thank you very much. Thank you, Madam Chair.

The CHAIRMAN. Senator Tillis.

Senator TILLIS. Thank you, Madam Chair. I made a personal note to go on the Internet and look up what a “vig” is.

Senator McCASKILL. Oh, come on. I do not believe you. You know what a “vig” is.

Senator TILLIS. Dr. Kroot, first of all, thank you for your service in the Navy and thank you for your continued service for our veterans. I wanted to get to the—you were required to take out a life insurance policy, I think, for \$180,000. This is after you have agreed to pay about \$230,000 back for a \$91,000 loan. What is the nature of the requirement that you have now in terms of keeping that life insurance policy current? I mean, are they paying it at this point and you have to keep it—I need to understand a little bit about that ongoing obligation.

Dr. KROOT. We paid for this and it was paid up, and when we—

Mrs. KROOT. It was a term life insurance and the term ends in October. We were unable to stop paying it until the end of the term because we needed permission from Structured to stop paying it.

Senator TILLIS. Thank you, and I am sorry for what you went through.

Ms. Wolf, I had a question for you. The Operation Voyager in Arkansas, it sounds like this—I think it is fair to call him a thief—he would originate some of these loans and then distribute them and sell them. I am trying to get a sense of what his business operation. It sounds like he would do a loan for Dr. Kroot, identify people that would buy the product that he has sold, and did he continue to service these loans? Did he have a business operation, or did he wash his hands of it after he transferred it or distributed it?

Ms. WOLF. Originally—well, pretty much, he washed his hands of it. What would happen is the company would, through an agent, say, in Florida, would find a pensioner who went to the website and filled out the information that wanted to sell their lump sum—their pension for a lump sum. This person in Florida, usually a military veteran, put the amount that they were looking to sell it for or the amount of money they needed and the amount of money that they got each month from their pension.

Voyager would then package these and put a purchase price on them, unbeknownst to the pensioner, and through another network

of agents would find a buyer who was willing to pay that amount of money for, say, \$1,000 a month for six years coming in, but Voyager would facilitate all the paperwork between the parties and would kind of stay out of it. They would facilitate everything—

Senator TILLIS. Yes, but who—I was trying to get a sense of who is actually doing the servicing of the loan, though, because there is still that process of, I guess, processing the pension payments, providing some disbursement back to the person who is providing the loans. I was trying to figure out or get a better understanding of the underlying business enterprise that exists for the life of the loan.

Ms. WOLF. Voyager would set up an escrow account for the lump sum payment, but then they would have the pensioner set up an escrow account for a certain amount of time to direct the pension, so there was never actually a loan. They would just have the pensioner direct that money into the escrow account for a certain amount of time, and that is where the issue came from, because the pensioners would then turn around and either redirect the money back to themselves or have to file for bankruptcy and get caught up in the bankruptcy. There was never the—or, the money to the pensioner would be distributed at the very beginning—

Senator TILLIS. Okay.

Ms. WALDEN [continuing]. and—yes.

Senator TILLIS. Mr. Rossman or Mr. Lord, or anyone else who may want to contribute, the law that was passed by Vermont, is that a best practice law? Is that something that all states should consider, or is there a best practice baseline out there that as we discuss what we may do at the Federal level, that we should be encouraging our respective states to take up?

Mr. LORD. Unfortunately, I do not know enough about the Vermont specifics to comment on, other than they do have a law that pertains to this issue.

Mr. ROSSMAN. The problem—the Vermont law is a good law, there is no doubt about that. The problem is that because of the situation of the Internet—it stops at the State line. States can only do so much to protect their citizens from people coming from outside the jurisdiction, and I think that the proposal of having a Federal system that would guarantee uniformity across the country would be a very good one, because there is going to always be a situation where they are going to be able to find a jurisdiction to be able to hide out, so to speak, in order to market their bad wares.

Senator TILLIS. Thank you very much, and thank you all for the work that you are doing. Again, Dr. Kroot, thank you for your service to our country.

The CHAIRMAN. Thank you.

Senator Warren.

Senator WARREN. Thank you, Chair Collins. I want to thank you for holding this hearing today. This is really important, and thank you, Ranking Member McCaskill, for doing this, and thank you to all the witnesses for coming. We really appreciate your coming and telling this story. I know it is hard to do that, but it is very important that we understand what is happening here.

I just want to see if I can pull this together so we have kind of got it all in one place, so defined benefit pensions, the steady, guar-

anteed income stream throughout retirement, we know these pensions are disappearing and the Americans who still have them know that they are lucky to have these pensions, but now there is this interconnected industry that is targeted to getting their hands on pensions. These pension scam companies turn a profit by offering retirees cash in exchange for a fixed amount of the buyer's future pension, as you testified to, plus, of course, interest and fees, and according to a 2014 report from the nonpartisan Government Accountability Office, and also as we have learned today from Senator Collins, these loans can have pretty shocking fine print, for example, effective interest rates over 100 percent, and to make sure that they get paid no matter what, these companies require the retirees often to buy a separate life insurance policy to cover the loan if the retiree dies and the pension stops, so it is a great deal for the companies running the pension scam. No risk and a hundred percent-plus interest rates on this.

I just want to pull a couple of the pieces apart here. Mr. Rossman, as the Director of Litigation at the National Consumer Law Center in Boston, you have seen the damage that these predatory pension scams do firsthand, and I want to ask about some of the details. Who is the typical victim of this kind of scam?

Mr. ROSSMAN. The typical victim of the scam, you are going to have someone who has a guaranteed stream of income——

Senator WARREN. Who does that tend to be?

Mr. ROSSMAN. You will be including in here you are going to have retired military personnel, you are going to have disabled military personnel, State, municipal, and Federal Governmental employees who are covered, and then in our case, those individuals who are covered by ERISA will very often have—and ERISA does have protections for anti-assignability——

Senator WARREN. So, military, teachers——

Mr. ROSSMAN. Teachers——

Senator WARREN [continuing]. firefighters——

Mr. ROSSMAN [continuing]. firefighters, exactly.

Senator WARREN. All right. Now, lots of states have consumer protection laws prohibiting loans with exorbitant interest rates, usury laws, and then there is the Federal Truth in Lending Act to protect consumers from loans like this, as well, so how can this be legal?

Mr. ROSSMAN. In our case, every single page of the contract was stamped on the bottom of the page with a rubber stamp that said, "This is not a loan." "This is not a loan." Now, I must tell you, after having done this for 20 years, if it quacks like a loan and it waddles like a loan and it smells like a loan, it is probably a loan——

Senator WARREN. It is probably a loan.

Mr. ROSSMAN [continuing]. but they went to great lengths in order to avoid having typical contract loan language and dis-counting that it was a loan.

One of the things that was rather interesting, though, and we caught them on, is that there were a number of cases early on where people tried to discharge in bankruptcy and we were able to get the bankruptcy records where the same company came running in and saying, "No, no, no, it is not a loan. It is an assignment." Then when we got in California, we said, "Wait a minute, Your

Honor. They were just in bankruptcy court saying that this was an assignment. Now they are saying it is not a loan. It has got to be something." You have got them on the horns of a dilemma.

Senator WARREN. I want to pursue that, but I just want to make sure. The reason they say it is not a loan——

Mr. ROSSMAN. Is because, first of all, you want to avoid the usury statute——

Senator WARREN. They are trying to avoid laws that govern loans.

Mr. ROSSMAN. Loans——

Senator WARREN. Second?

Mr. ROSSMAN [continuing]. including Truth in Lending, and second, they want to avoid having it discharged in bankruptcy——

Senator WARREN. That is right, so they do not want to have to make the disclosures.

Mr. ROSSMAN. That is correct.

Senator WARREN. They do not want to comply with the laws around loans, so they go over to the other side and they say they are not loans, they are assignments.

Mr. ROSSMAN. Mm-hmm.

Senator WARREN. Let me ask that question, then. If these are assignments, are they then legal?

Mr. ROSSMAN. In certain cases they are not, and that is where the cloudiness comes. If it is military pay for a retired veteran, for enlisted personnel, you are protected by the Military Pay Act, but if you are, unfortunately, like the Doctor, a commissioned officer, you are not protected. All disabled veterans are covered under the VA by anti-assignability. Virtually every Federal and State employee statute—pay statute—includes provisions for anti-assignment provisions, as well, and as I said, ERISA in many cases prevents it, but that is not a majority of the pensions that are still out there.

Senator WARREN. For some people, it is the case——

Mr. ROSSMAN. That is——

Senator WARREN [continuing]. that it does not matter whether it is a loan or an assignment. It is not legal——

Mr. ROSSMAN. That is correct.

Senator WARREN [continuing]. either way.

Mr. ROSSMAN. You have got them on the horns of a dilemma.

Senator WARREN. That is right. For some, assignment is still legal, and this is just a place where the law has not given full protection.

Mr. ROSSMAN. That is correct.

Senator WARREN. It sounds like we are starting to get some action on this. Five years ago, Congress passed Dodd-Frank, created the Consumer Financial Services Bureau to try to prevent companies from cheating consumers, and as someone mentioned earlier in their testimony, the CFPB has now partnered with the New York Department of Financial Services to file two suits against two of the largest pension scam companies for using these deceptive marketing practices to dupe retirees into borrowing from their pensions. Obviously, a good first step, but we need to do more. There is no excuse for this. It is time to put a stop to these scams.

Thank you, Madam Chair.

The CHAIRMAN. Thank you.

Senator KAINE.

Senator KAINE. Thank you, Madam Chair, and thanks to all the witnesses. This is, sadly, eye opening, and especially the specter of ads targeting veterans with sort of flag waving and patriotic themes and pictures perpetrated by scam artists. It just makes you sick to your stomach. I mean, I am really discouraged at this.

A couple of questions I was going to ask you. Maybe I will start with Ms. Wolf, so Andrew Gamber, he had had a previous history before getting into this pension advance area. He had permanently lost his license as an insurance broker for grossly misleading his customers, according to the Committee briefing for this. I guess he was in a field where there was a regulated environment and he had engaged in activities that caused him to have his license pulled.

Ms. WOLF. Right.

Senator KAINE. I guess it is an indication that this kind of falls in the cracks, these pension advance, because he could go from a regulated area, losing his license, to setting something like this up without a license.

Ms. WOLF. Right.

Senator KAINE. Is that just the quirks of all the different State laws and how this kind of financial product is treated, or maybe more often not treated under State law?

Ms. WOLF. I would think so, but also, Mr. Gamber seems to not really have a conscience and not really care what the laws are. He was—his license was revoked in 2009 from the Arkansas Insurance Department. He was not regulated as a broker-dealer or an investment advisor under our act, but that is not to say that he was not selling securities, because it was a security under Arkansas law, we were able to take action. I do want to point out, his license was revoked in 2009. He formed VFG in 2010.

Senator KAINE. Mm-hmm.

Ms. WOLF. We took action against him in 2013 and 2014, and now he has formed a new company, and so he is definitely finding ways to skirt the law and finding those gray areas to exploit.

Senator KAINE. The GAO report is interesting, because I think your study indicated with this bubble chart that the pension transactions are concentrated in these two large groups, and one was Mr. Gamber, and we talked about him, and the second, Future Income Payments Group, is run by Steven Kohn, whose earlier business endeavors prior to his involvement in the pension advance business led to him being convicted of Federal criminal counterfeiting, so, you have got the two main groups. One is being run by somebody who has lost his license because of misrepresentations to insurance clients, and the other is being run by somebody who had been convicted of Federal criminal counterfeiting, and these are the two main groups that are doing this in the country right now.

Mr. LORD. Well, unfortunately, you have several unsavory characters operating in these business lines. From a consumer perspective, again, it is very difficult to really know who you are dealing with, because that is not revealed on the company website, so again, from a disclosure perspective, that is why we raised that as an issue in our report.

Senator Kaine. Again, from sort of a regulatory problem, if you have got, you know, folks who have been in different sort of financial capacities and one has been suspended, his license is, because of insurance challenges, and the other has been convicted of Federal criminal counterfeiting, but nevertheless they can do this kind of a business, this suggests that there is sort of, like, a gap in which they are trying to fit their work in a less regulated area.

Mr. Lord. Yes.

Senator Kaine. It is amazing that we would have less regulation for these kinds of pension transactions than we would for insurance. I mean, insurance is really important. Pensions are really important, too, and that that would be a gap is something that is notable.

I want to take the Kroots' testimony—and I really appreciate you coming and sharing the experience, and I often find these hearings are really valuable because people are willing, thank God, to come share what has been a painful experience and we can learn from it. Thank you for being willing to do that, but they talked about—and I am going to ask the other witnesses to kind of help me with this question. They talked about the challenge they were dealing with. They had a challenge with medical bills for a daughter. They had a challenge with some housing expenses. These are the kinds of things that people run into every day, and one of you indicated, there are many alternatives that are better than these kinds of loans, so be sort of generic advisors to seniors or veterans that are confronted with financial needs like they described. You have got some real legitimate concerns. You see these kinds of ads in the paper about maybe take advantage of this 800 number, or get on this website to get help. What are the better alternatives? We are having hearings like this to, you know, educate people. What are the better alternatives that folks should explore? And I just would love to have any of you talk about that, and again, we are not talking about a particular circumstance.

Mrs. Kroot. Right.

Senator Kaine. We are just generally—and, Mrs. Kroot, you want to jump in first, so please.

Mrs. Kroot. Yes. One of the things that happened with us in Structured, we took this money out to pay the IRS, and at the end, when the loan was concluded, we were given a list of who we could pay and who we could not. The IRS was not on it, so we paid those other ones and we had to finally call the IRS, who has worked with us on a payment plan for the \$100,000.

Senator Kaine. Mm-hmm.

Dr. Kroot. I wish to put on the record, the IRS was extraordinarily cooperative in coming up with a payment plan that was not a burden to us.

Senator Kaine. Mm-hmm.

Mr. Rossmann. Senator, one of the things that is important, and we were talking before about why they were treated as loans or assignments, one of the pitches that these companies will make is that because it is not a loan, you do not have to worry about your credit score. Many of the people who are in dire financial straits, it is because their credit scores have deteriorated to the point where they cannot have access to prime loans and other sources of

funding, and what they are saying is that since this is not a loan, we do not care about your credit score. Yes, you have got the U.S. Government paying you off, so what are you going to worry about? And you have got insurance covering you, as well.

I think that you are dealing with a community which has difficulties because of their credit scores and they are looking for options. There are a number of things. If you are dealing with credit cards, for example, working with the credit card companies or dealing with a nonprofit—

Senator KAINE. Credit counseling—

Mr. ROSSMAN [continuing]. a credit counselor—

Senator KAINE. Right.

Mr. ROSSMAN [continuing]. to help you work out a plan to be able to pay off is certainly better.

As I said beforehand, you do have this guaranteed stream of income which, although you do not want to lose control of it, you can still use it as a collateral as part of a good plan in order to pay down your debts in order to be able to secure funding against it but while maintaining control of the funding and not turning it over to someone else.

I would say the final area, at least in the military, is that the JAG Corps was very upset because there are various programs set up within the military with relief funds—Naval Relief, Air Force Relief, Army Relief—to be able to work with their veterans to help them in distress.

I think the thing that is so disturbing to me in the military area is that these thieves are stealing what are essentially tax dollars that are being paid on pensions, stealing them from veterans who have served their country, and then expect us to be able to take care of those veterans afterwards because, of course, we are not going to abandon them when they do not have the ability to take care of their own needs, so where is—there is just no justice in there whatsoever. Everyone is being victimized and these thieves are ripping us all off at the same time.

Senator KAINE. Madam Chair, I think Ms. Wolf was going to answer for me, too, and I know I am over time, but is that okay? Ms. Wolf, were you going to weigh in?

Ms. WOLF. I will keep this very brief. Not necessarily an alternative, but I do want to thank Dr. and Mrs. Kroot for coming forward, because as a securities regulator, a lot of times, we do not hear about these scams until someone is brave enough to pick up the phone and call us, because we do not—we are not on the front lines every day, and so, one of the most important things is that if you are in doubt or you hear about a new company, especially these companies that are very good at tricking you and making you think they are one entity but they are really another, call your local State agency, and whether it is an Attorney General's office or the securities department—a lot of times you do not know which agency would regulate what—they are very good about working together and referring cases. If ever you have a question, call your State regulator and ask and see if they are regulated or if they have had complaints on this company, and that way, you at least can know going forward—hopefully know what you are getting into.

Senator Kaine. Great. Thank you, Madam Chair.

The CHAIRMAN. Thank you.

Mr. Rossman, I want to give you a chance to answer the question that I posed about what we should do about this. Obviously, states can take action. Litigation can be filed. Regulation can be implemented at the State level. There are new laws, lawsuits filed, et cetera, but I am so outraged by what has happened to the Kroots and so many others, particularly, as you said, those who have served our country, or served our states and cities and are now being taken advantage of, and it is evident that these transactions fall in a very gray area, as Mr. Lord said, so do we try to get Federal legislation passed? Do we amend the Truth in Lending Act to have better disclosure, at least? What is your suggestion for us?

Mr. ROSSMAN. Well, the simple practical responses are that there are many laws already that are not being enforced, and I would love to be able to see them being enforced. I would love to have the Department of Defense, for example, monitor these allotments that, if they are being placed into separate escrow accounts, that it should send up some red flares to find out what is going on and whether or not there has been a violation of the laws.

I thought, Senator Tillis, your comment was rather interesting, because in the case with Dr. Kroot with RMFS, which was the lead generator, they were the agent that was out there trying to solicit for Strategic Investments, they are owned by the same people. It is the same ganif who is the guy who had been convicted for Federal law, and then turned around and avoided liability through bankruptcy court, getting his judgment discharged.

I am a former prosecutor. I would like to see some RICO claims brought against these folks and maybe some jail time. As I said beforehand, they are the worst of the worst since they have literally nothing invested in these cases whatsoever. They are taking investors' money. They are taking the money that belongs to the taxpayers and to the pensioners. They are taking their cut for providing no service whatsoever and then they are returning into the dark where they can get away with this time and time again, and it is about time that someone stopped this kind of behavior with something more than a slap on the wrist.

Beyond that, just clearly disclosure, so people understand the product that you are getting, so you have the Schumer Box equivalent for pension loans that clearly identifies the interest that is being charged. I think that, certainly, having anti-assignment provisions that extend beyond public officials but would apply to all pensioners would be very, very helpful, as well.

The CHAIRMAN. Thank you. That is very helpful, and I want to remind everyone that RMFS, which you mentioned, was Retired Military Financial Services. If you saw that name, you would think it was a completely legitimate organization, particularly if the ad appeared in a military magazine, and I think that is why the Department of Defense needs to be more proactive in warning its military retirees that these schemes are out there.

I hope that the hearing that we have had today will help to heighten public awareness, and that is why I am so particularly grateful to Dr. and Mrs. Kroot for coming forward, but for all of you sharing your personal experiences in this area.

I want to ask my colleagues if anyone has a final question that they would like—yes, Senator Tillis.

Senator TILLIS. Thanks again for all of you being here today.

The one thing that just strikes me about—and I really do think there is a criminal enterprise there. We have got some of the bad actors we named here, but there are a lot of people in this process or this chain that probably also need to be smoked out, as well.

It does not seem to me—is there any possible way that after you get these agreements in place that you could actually have any kind of defaults?

Mr. ROSSMAN. Certainly not in the ones that we were looking at, no.

Senator TILLIS. The one thing—I think that this is extraordinary. We can have our discussions about some other lending practices and what is a fair rate, but at least some of their rates are driven by loss ratios that they have to manage to be able to provide a service, but this is completely independent of that discussion, whether it is payday or residential lending or whatever else. This is just purely criminal activity, where they are getting a guaranteed rate of return, charging an exorbitant interest rate, all upside, and actually, to the point here, if you miss a payment, even greater upside, zero downside. It is a criminal practice that we need to work to eliminate.

Mr. ROSSMAN. You are absolutely right.

Senator TILLIS. Thank you.

Chairman COLLINS. Thank you.

Senator McCaskill.

Senator McCASKILL. I just have one question.

Mr. Lord, I have found time and time again in doing oversight that one of the biggest enemies of oversight is a whole lot of cooks in the kitchen that have a piece of it, and because then when there is something bad going on, everybody does like this. Well, why is not—I mean, to Mr. Rossman's point, things are not being enforced, but, you know, we have got FTC, we have got CFPB, we have got SEC. Then you have got Treasury, you have got PBGC, you have got DOD, you have got VA.

If we were to work on a legislative action around these scams, where should we place primary responsibility for oversight for these products?

Mr. LORD. Well, I think CFPB—I mean, their authority is already well established and clear. To me, it is just a matter of exercising it. I think the good news is they took enforcement action on two of the 38 companies we referred to them, but my question to them is, well, what about the remaining 36, to the extent they are independent entities? I think it is more—

Senator McCASKILL. It is like shooting fish in a barrel. These two guys should go to jail, like, immediately. Do not pass go. One of them has already been in jail, I believe. Yes.

Mr. LORD. I mean—

Senator McCASKILL. I am shocked, just shocked.

Mr. LORD. I am not sure they need more authority, but it is what are they doing with the authority they already have.

Senator McCASKILL. Do you believe that the primary authority now is at CFPB?

Mr. LORD. Well, it is shared with FTC. They also have an enforcement role in this area, but if you—I mean, those are the two key agencies, and again, in terms of consumer education, Treasury chairs the so-called FLEC——

Senator McCASKILL. Right.

Mr. LORD [continuing]. Financial Literacy and Education Commission, but CFPB, they are the vice-chair, so——

Senator McCASKILL. Yes.

Mr. LORD [continuing]. they have a role in that, as well.

Senator McCASKILL. Maybe we need to direct an inquiry to the CFPB and to the SEC, or the FTC, and talk to them about what is their plan——

Mr. LORD. Yes.

Senator McCASKILL [continuing]. of going after these guys.

Mr. LORD. They will talk a lot about the consumer education, but I——

Senator McCASKILL. Yes. No, no, no, no——

Mr. LORD [continuing]. clarify the enforcement side——

Senator McCASKILL. We need some deterrent here.

Mr. LORD [continuing]. so the FTC——

Senator McCASKILL. Yes. People need to go to jail. Thank you, Mr. Lord.

Mr. LORD. Thank you.

The CHAIRMAN. I want to thank our excellent panel of witnesses for appearing today. You have really increased our understanding of what truly is an unconscionable scam so frequently directed against patriots who have served our country or those on the front lines in municipal and State governments, and we are going to continue this investigation. This is a first of a series of hearings as we begin to delve even deeper into these schemes.

I want to thank each and every one of you for being here today, and again, particularly my thanks to the Kroots for coming and sharing your personal story. I can assure you that because of your willingness to share a very painful episode in your life, that you will, in fact, prevent others from making the same mistake, so thank you for coming forward, and my thanks and gratitude to all of our witnesses.

The Committee members will have until Friday, October 9th, to submit additional questions for the record, which we will send your way if there are some, or any additional statements.

The posters that have been displayed will also be included in the hearing record.

The CHAIRMAN. Again, my thanks to our expert panel, to my Ranking Member Senator McCaskill, and to all the Committee members, including the ever-faithful Senator Kaine, who comes to all of our hearings, for participating in today's investigation and hearing.

This concludes the hearing. Thank you.

[Whereupon, at 3:57 p.m., the Committee was adjourned.]

APPENDIX

Prepared Witness Statements

SENATE SPECIAL COMMITTEE ON AGING

Susan M. Collins, Chairman

Claire McCaskill, Ranking Member

“Pension Advances: Legitimate Loans or Shady Schemes?”

Sept 30, 2015

2:30 PM

Dirksen Room 562

Testimony of Dr. Louis Kroot, CMDR, USN, Retired and wife Kathie Kroot.

Chairman Collins, Ranking Member McCaskill, distinguished Senators on the Committee. Thank you for the opportunity to appear before you today and to testify about our family’s experience with pension advances. We are here today as husband and wife because in the 34 years of our marriage we have always operated as a team, and ours is a shared cautionary story.

For 22 years I served our country in the Navy as a physician. When I retired as a Commander I intended to continue to work as a doctor, and I did so, working as an ER attending physician in several hospitals. Today I continue to work as an ER attending at a VA hospital in Lexington, Kentucky. My wife Kathie has been at my side throughout my career and has done incredible work as an advocate for organ donation and a devoted volunteer at our synagogue.

When I left the military we planned to continue to provide for our family through work and through my military pension, but due to a perfect storm of

unfortunate events we were left with debt spiraling out of control. First, we received bad tax planning advice when moving funds from a 401(k) and incurred around over \$100,000 in unexpected fees and penalties. Second, we suffered over \$10,000 in unexpected home repairs. Third, we incurred an enormous amount of medical expenses when it became necessary for our adopted special needs daughter to be repeatedly hospitalized for serious medical conditions.

We were financially desperate at this point and did not know where to turn. We had incurred extraordinary and unexpected debt. We were looking for any way to pay off this debt. We had seen advertisements in military magazines for companies that gave lump sum payments for military pensions. We contacted one of these companies, Sturctured Investments, which was doing business under the name of Retired Military Financial Services, and they offered to provide us with a lump sum payment against my future pension payments. We jumped at the opportunity. We felt that the lump sum payment Structured Investments offered would allow us to pay off much of our existing debt.

We understood at the time that we were taking out an advance on monies that would be due from future retirement payments, and we understood that there would be fees for this service. But we didn't realize how expensive it was going to be. We simply did not get out the calculator and unpack the complex language in the agreements. We were desperate and we were panicked.

After the fact, we realized that we had been taken to the cleaners by Structured Investments. We were shocked when the complex math in the contract was broken down, and it was explained to us that we were paying over 30 percent interest on our advance. The paperwork we signed did not disclose the interest rate and did not break down how the numerous fees we were paying to Structured Investments raised our interest rate. An example of these fees are the thousands of dollars we paid to ensure that there was a life insurance policy on me that designated Structured Investments as the beneficiary. We ended up paying more in interest with our pension advance than we would have paid if we simply paid off the interest over time on our existing debt load. Moreover, we learned after the fact that there were alternatives we could have used to reduce our debt load while avoiding paying the high interest rates charged by Structured Investments.

We have fully paid off Structured Investments. Partially as a consequence of the high interest rates we paid we have been forced to delay full retirement.

Looking back on our experience it is clear that we made a mistake: We should have been more aware of what we were buying. We also want to make clear that we accept that we signed the contract and we accept responsibility for that. We should have known better.

As we said, ours is a cautionary tale, and we want to make two points to those who may find themselves in a situation similar to ours. First. You have other options. You should explore those options and should resist the urge to reach for easy, immediate cash. Second. Had we known what we now know we never would have taken out the high interest pension advance from Structured Investments. We wish we could do everything over again and make better decisions. It is our fervent hope that by testifying today we can prevent other individuals from making the same mistake we did.

Thank you again for the opportunity to be here, and we look forward to your questions.



United States Government Accountability Office

Testimony
Before the Special Committee on Aging,
U.S. Senate

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PENSION ADVANCE TRANSACTIONS

Questionable Business Practices and the Federal Response

Stephen Lord, Managing Director, Forensic Audits and
Investigative Service



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
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Chairman Collins, Ranking Member McCaskill, and Members of the Committee:

I am pleased to be here today to discuss the findings of our June 2014 report on Pension Advance Transactions.¹ 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.²

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

¹GAO, *Pension Advance Transactions: Questionable Business Practices Identified*, [GAO-14-420](#) (Washington, D.C.: June 4, 2014).

²Pension 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 the purposes of our June 2014 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.³ 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.

Various federal agencies have oversight roles and responsibilities related to consumer and investor issues, including those related to the elderly population. 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.⁴

My remarks today highlight the key findings of our June 2014 report on pension advance transactions and highlight the actions that federal agencies have taken to date to address our report findings and recommendations. Like the report, this testimony (1) describes the number and characteristics of entities offering pension advances and the

³MetLife 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.

⁴Treasury'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 other plan specified under 26 U.S.C. § 414(d).

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.⁵

My statement is based on our June 2014 report, which identified and examined 38 companies that offer pension advances⁶ and obtained demographic information about these companies using public and nonpublic data.⁷ We also obtained additional data on 19 of the 38 pension advance companies selected for case studies from a variety of sources including undercover investigative phone calls, which we used for illustrative examples in our June 2014 report. Though not generalizable to all pension advance companies, this information provided insights into a variety of pension advance transactions. For the six companies that provided written quotes to our undercover investigator, we conducted an

⁵Because the pension advances described in our June 2014 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 our June 2014 review, we considered 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 included 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 included its needs-based benefit program for veterans and their survivors that is called a "pension" in our definition of pension in our June 2014 report.

⁶For purposes of that review, we considered 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 that review, the term "pension advance" did not refer to lump-sum payment options offered directly through pension plans.

⁷The 38 companies that we identified and reviewed either had or recently had offered pension advance products within the last 2 years. We described this group of companies throughout the report. However, our list of pension advance companies may not have captured all companies that exist. Some companies may have existed that did not market through the Internet or publications that we reviewed or that did not have documented complaints or registered with any of the sources to which we had access. However, we believe that our population effectively described the minimum level of variation or similarities in pension advance companies and transactions. In addition, as we describe in our report and this statement, 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.

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.⁸ We also reviewed criteria from relevant laws and regulations and met with members from the North American Securities Administrators Association, federal and state agencies that have oversight over consumer-protection regulations, financial transactions, marketing and sales-practice regulations, or pensions, and advocacy organizations associated with the retired population. We used this information to examine the extent to which federal agencies had 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. Additional details on our scope and methodology are included in the June 2014 report.⁹ In addition, for this statement, we obtained information on the status of the implementation of our recommendations from CFPB and FTC. The work upon which this statement is based was conducted in accordance with generally accepted government auditing standards and standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

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

⁸We considered consumer loans and lump-sum payments offered through pension plans to be comparable products for purposes of our June 2014 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 through certain pension plans in exchange for ongoing pension payments. 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 plans. 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 our June 2014 report, we focused on the two financial products that we believed were most comparable.

⁹GAO-14-420.

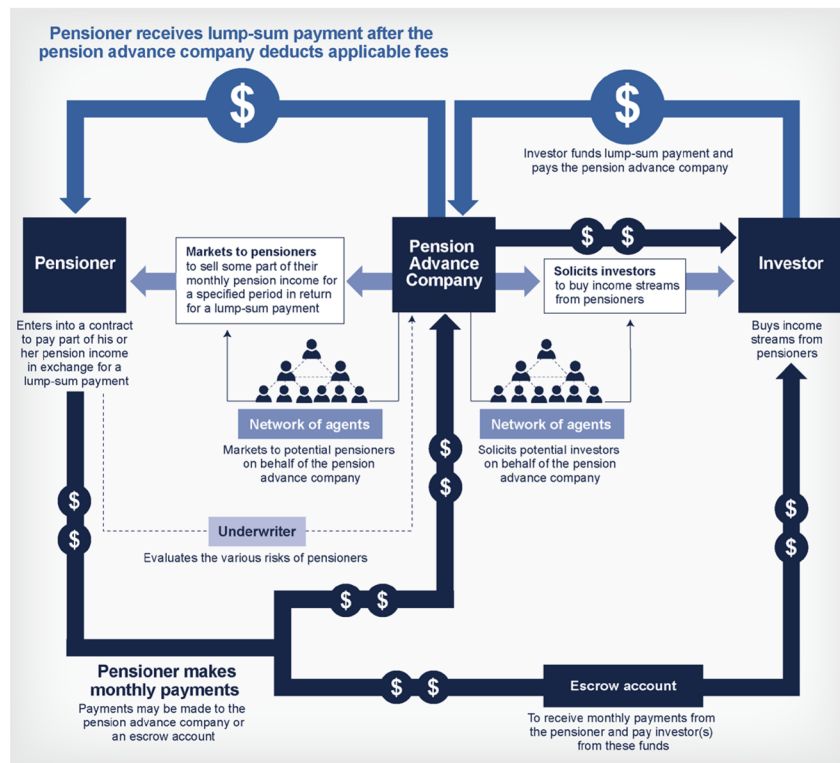
amount of the consumer's future pension payments plus various fees.¹⁰ Pension investments, the related product, provide investors a future income stream when they make an up-front lump-sum investment in one or more pensioners' incomes.

Multiple parties can be involved in pension advance transactions, including consumers (pensioners), investors, and pension advance companies. After the pensioner signs the pension advance 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.¹¹ 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. 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 as part of our June 2014 report in the multistep pension advance processes that we reviewed.

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

¹¹A 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. 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. | GAO-15-846T

GAO-15-846T

**State and Federal Laws,
Regulations, and
Oversight Roles and
Responsibilities**

Various state and 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. In addition, 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.¹² Depending on the overall structure of the products involved, state securities laws could also apply.

Various state and federal agencies have oversight roles and responsibilities related to consumer and investor issues. CFPB, FTC, and 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. 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 over federal civilian pensions; DOD has oversight over military pensions; and VA has oversight over a needs-based benefit program called a "pension."¹³ States may also oversee and investigate pension advance transactions. As we describe later in this testimony, the state of New York worked with CFPB to file a lawsuit in August of 2015 against two of the firms that we referred to CFPB for review and investigative action.

¹²Most states have usury statutes that limit 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.

¹³As previously described, Treasury also has oversight over certain provisions related to state and local government pensions, which we do not discuss in our June 2014 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.

**A Number of
Geographically
Concentrated and
Affiliated Companies
Were Involved in
Pension Advances
and Marketed to
Financially Vulnerable
Consumers
Nationwide**

In June 2014, we reported on the number and characteristics of entities offering pension advances and the marketing practices that pension advance companies employ. During our review, we identified at least 38 companies that offered lump-sum advance products in exchange for pension payment streams.¹⁴ Eighteen of the 38 companies we identified were concentrated in one state and 17 of these 38 companies also offered lump-sum cash advances for a wide range of other income streams, in addition to pension advances, including lottery winnings, insurance settlements, and inheritances. Another 17 companies exclusively focused on offering pension advances.¹⁵

We also 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.¹⁶ 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. See figure 2 for an illustration of some of the relationships between companies that we identified during the June 2014 review.

¹⁴The 38 companies that we identified and reviewed either had or recently had offered pension advance products within the last 2 years. These companies were identified during our audit and were 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 in this statement.

¹⁵The remaining four companies had or recently had 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.

¹⁶For purposes of this testimony, 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.



GAO-15-846T

companies. However, the specific relationships between these other companies are unclear and therefore are not presented in the figure above.

*This company was formerly known by a different name

- 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.¹⁷
- 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 medical bills, or appealed to consumers' desire to have quick access to the cash value of the pension that they have earned.
- 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. 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 stated that no application would likely be declined.

¹⁷Thirty-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 did not accept clients from the states of New York, Arkansas, Massachusetts, Iowa, or Missouri.

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

Six pension advance companies provided our undercover investigator with quotes for pension advances with terms that did not compare favorably with other financial products such as loans and lump-sum payment options provided directly through private-sector pension plans.¹⁸ We compared the 99 offers provided to our undercover investigators by six pension advance companies in response to phone calls and online quote requests with those of other financial products.¹⁹ Specifically, we compared the terms with: (1) relevant state usury rates for loans and (2) lump-sum options offered through defined-benefit pension plans.²⁰ 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 private-sector pension plan that provided an equivalent lump-sum option.

Comparison to Usury Rates

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.²¹ 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 our undercover investigator received from three pension advance companies for a resident of California had effective interest rates ranging

¹⁸The other 13 companies that we contacted during our undercover investigative work did not provide quotes for pension advances.

¹⁹We 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.

²⁰We 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.

²¹In addition, one company provided our undercover investigator 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 fictitious pensioners residing in California and Texas.

from approximately 27 percent to 83 percent.²² 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 our undercover investigator received, it was unclear whether the pensioner would be responsible for any life-insurance premium payments.²³ See table 1 for additional examples of usury-rate comparisons for states where our fictitious pensioners resided for our case studies.

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	Usury rate of state (percent)	Effective interest rate of offers from companies (percent) ^a
California	3	27	12%	27–83%
Florida	2	7	18	27–38
Maryland	1	63	24	27–46
Texas	2	2	18	27–90

Source: GAO analysis of offers received from select pension advance companies in response to our undercover investigative online quote requests and phone calls. (GAO-15-040)

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.

^aThe results of our calculation of the effective interest rate of offers from companies are not generalizable.

²²The quotes that our undercover investigator 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.

²³According 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.

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 the plan offers a lump-sum option and a private-sector pensioner chooses that option.²⁴ We determined the minimum lump-sum amount under ERISA rules for private defined-benefit plan sponsors.²⁵ On the basis of our analysis of 99 pension advances offered by six companies, we determined that the vast majority of the offers our undercover investigator 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 pensioners would receive about double the lump sum that they were offered by pension advance companies.²⁶

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. Additional information on the basis for the ERISA calculations is included in our June 2014 report.²⁷

²⁴26 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.

²⁵To 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. Additional information about our calculations is included in the June 2014 report.

²⁶Two of the offers were more favorable with an amount of approximately 77 percent of the minimum lump sum that would be required under ERISA.

²⁷[GAO-14-420](#).

In January 2015, we reported that pension plan participants potentially face a reduction in retirement income if they accept a lump sum offer.²⁸ Since the time of our review, Treasury announced plans to amend regulations related to the use of lump-sum payments to replace lifetime income received by retirees under defined benefit pension plans. Specifically, these amendments generally would prohibit plans from replacing a pension currently being paid with a lump sum payment.²⁹ As noted above, our June 2014 comparison observed that ERISA-regulated lump-sum payments from pension plan sponsors were considerably higher than the lump sum amounts offered by pension advance companies. In the future, pension advance offers may appear more appealing to some consumers who require money immediately that do not otherwise have the option to obtain an ERISA-regulated lump sum payment.

There Is Limited Federal Oversight of Pension Advances

Questionable Practices Related to Unregulated Transactions Pose Consumer Risks

Our June 2014 report identified questionable elements of pension advances, such as the lack of disclosure and unfavorable agreement terms. 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), and whether pension advances are actually loans and should be subject to relevant TILA laws is a long-standing unsettled question. During our June 2014 review, we found that the costs of pension advances were not always

²⁸Since the publication of our June 2014 report on pension advances ([GAO-14-420](#)), GAO issued a report detailing the prevalence of lump-sum windows, or limited-time offers by pension-plan sponsors to participants to replace their benefits in the form of a lump sum. See GAO, *Private Pensions: Participants Need Better Information When Offered Lump Sums That Replace Their Lifetime Benefits*, [GAO-15-74](#) (Washington, D.C.: Jan. 27, 2015).

²⁹"Use of Lump Sum Payments to Replace Lifetime Income Being Received By Retirees Under Defined Benefit Pension," Notice 2015-49, *Internal Revenue Bulletin*, no. 2015-30 (July 27, 2015).

clearly disclosed to the consumer and some companies were inconsistent about whether the product was actually a loan.³⁰

- For example, 31 out of the 38 companies we identified did not disclose to pensioners an effective interest rate or comparable terms on their websites. For loans, under TILA, companies would be required to disclose an effective interest rate for the transaction.
- We also found that some of the offers provided to our undercover investigator by six pension advance companies were not clearly presented. 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. We considered this volume of information to be overwhelming while not including basic disclosures, such as the effective interest rate or an explanation of the additional costs of life insurance.
- In addition, the full amount of additional fees such as life-insurance premiums was not always transparently disclosed in the written quotes that six pension advance companies provided to our undercover investigator.
- 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.

³⁰As 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.

Limited Federal Oversight
and Consumer Education
Related to Pension
Advances

Oversight

During our review we found that there was limited federal oversight related to pension advances. Both CFPB and FTC are authorized to protect consumers and to regulate 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 our June 2014 report. However, at the time of our 2014 review, neither agency had undertaken any direct oversight or public enforcement actions regarding pension advances. According to CFPB officials, they were concerned about the effect of pension advances on consumers, but stated that they had not taken an official position or issued any regulations regarding pension advance transactions or products, or taken any related enforcement actions. According to FTC officials, the agency had not taken any public law-enforcement action as they had not received many complaints regarding this issue. As noted in our 2014 report, conducting a review to identify whether some questionable practices—such as the ones highlighted in our report—are unfair or deceptive or are actually loans that should be subject to disclosure rules under TILA, and taking any necessary oversight or enforcement action, could help CFPB and FTC ensure that vulnerable pensioners are not harmed by companies trying to exploit them. Hence, we recommended that CFPB and FTC review pension advance practices and companies, and exercise oversight and enforcement as appropriate. CFPB agreed with this recommendation and took action by investigating pension advance companies with questionable business practices. We also referred the 38 companies that we identified in our review to CFPB for further review and investigative action, if warranted. In August 2015, CFPB filed suit against two of the companies included in our review for a variety of violations including, among others, unfair, deceptive, and abusive acts or practices in violation of the Consumer Financial Protection Act of 2010 and false and misleading advertising of loans.³¹ FTC also agreed with our recommendation and, according to FTC officials, the agency has also

³¹During our review, we found that the two companies listed in the lawsuit were affiliated with one another.

	taken actions to review consumer complaints related to pension advances, pension advance advertising, and the pension advance industry overall.
Consumer Education	<p>In our June 2014 report, we highlighted that 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, 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. 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.³² 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.³³ At the time of our 2014 review, we found that CFPB and four other agencies had taken some actions to provide consumer education on pension advances.³⁴ However, several other federal agencies—including some that regularly communicate with pensioners as part of their mission—did not provide information about pension advance products and their associated risks and were not aware of CFPB publications at the time of our review.³⁵ Also, these agencies reported that they had not identified many related complaints and some were just learning about pension advance products. We recommended that CFPB coordinate with the federal agencies that regularly communicate with pensioners on the dissemination of existing consumer-education materials on pension advances. CFPB agreed with this recommendation and released a consumer advisory about pension advances in March 2015. In addition, CFPB provided the Financial</p>

³²GAO, *Financial Literacy: Overlap of Programs Suggests There May Be Opportunities for Consolidation*, [GAO-12-588](#) (Washington, D.C.: July 23, 2012).

³³12 U.S.C. § 5493(d).

³⁴The four organizations that had taken actions to provide consumer education on pension advances included three organizations included in our review—SEC, Financial Industry Regulatory Authority (FINRA), and PBGC—as well as the Federal Deposit Insurance Corporation, which was not included in our review.

³⁵Officials 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 June 2014 review.

Literacy and Education Commission with material related to pension advances in April of 2015. Similarly, FTC—which educates consumers on consumer products and avoiding scams through multimedia resources—had not previously provided any specific consumer education about pension advances. However, in response to our review, in 2014, FTC also posted additional consumer-education information about pension advances on its agency website.

In conclusion, 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 my statement 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 security at risk, and make it more difficult for consumers to file complaints with federal agencies, if needed. CFPB and FTC have taken actions to implement the recommendations that we made to review pension advance practices and companies, and exercise oversight and enforcement as appropriate, as well as to disseminate consumer-education materials on pension advances. We believe their implementation of these recommendations will help to strengthen federal oversight or enforcement of pension advance products while ensuring that consumer-education materials on pension advances reach their target audiences, especially given that Treasury's recent announcement restricting permitted benefit increases may make these products more desirable to pensioners.

Chairman Collins, Ranking Member McCaskill, and Members of the Committee, this concludes my prepared remarks. I look forward to answering any questions that you may have at this time.

**GAO Contact and
Staff
Acknowledgments**

For further information on this testimony, please contact Stephen Lord 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 statement. Individuals making key contributions to this testimony include Latesha Love, Assistant Director; Gabrielle Fagan; John Ahern; and Nada Raoof. Also contributing to the report were Julia DiPonio, Charles Ford, Joseph Silvestri, and Frank Todisco.

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Pension Advances: Legitimate Loans or Shady Schemes?

Testimony of Kaycee L. Wolf
Staff Attorney for the Arkansas Securities Department

Before the
United States Senate
Special Committee on Aging

September 30, 2015

Chairman Collins, Ranking Member McCaskill, and distinguished Members of the Committee, thank you for the opportunity to speak to you today regarding the secondary sales of pension income streams. I am a staff attorney for the Arkansas Securities Department ("Department") and am here on the Department's behalf to discuss our investigation and findings of one such company that created a platform to facilitate transactions between buyers and sellers of income streams derived from assets that have fixed payment amounts and terms, such as retirement or military pensions.

Background

The Department is charged with implementing and overseeing the Arkansas Securities Act ("Act"). Pursuant to the Act, the Department regulates the sale of securities, securities brokerage firms and their agents, and state-registered investment advisers and their representatives. Our duties include implementing registration, enforcing compliance, investigating consumer complaints, and promoting investor education.

The Staff of the Department ("Staff") initiated an investigation on Voyager Financial Group, LLC on January 26, 2012.¹ On April 23, 2013, the Arkansas Securities Commissioner ("Arkansas Commissioner") issued a Cease and Desist Order against VFG, LLC f/k/a Voyager Financial Group, LLC ("VFG") for the sale of unregistered securities. Order No. S-12-0015-13-OR02, *In the Matter of VFG, LLC f/k/a Voyager Financial Group, LLC, Andrew Gamber, Kevin McNay, Robert Henry, and Jonathan Sheets*. On March 18, 2014, the Arkansas Commissioner entered a Second Cease and Desist Order for untrue statements of a material fact or omission of a material fact in connection with the sale of a security. Order No. S-12-0015-14-OR06, *In the Matter of VFG, LLC f/k/a Voyager Financial Group, LLC, and Richard Younkman*. In lieu of a hearing on the two cease and desist orders, a consent order was entered into on June 23, 2014, where the parties agreed that secondary sales of income streams are considered investment contracts and therefore securities that were not properly registered or exempt pursuant to the Act. VFG and Gamber agreed to stop selling securities through the use of misstatements and omissions of material information in violation of the Act. Order No. S-12-0015-14-OR07, *In the Matter of VFG, LLC f/k/a Voyager Financial Group, LLC, and Andrew Gamber*.

Although Staff believes that Gamber ceased doing business as VFG, there is suspicion that Gamber continues to operate a similar enterprise under another company name. The Department currently has an ongoing investigation against Strategic Marketing Innovators, LLC, BAIC, Inc., and Andrew Paul Gamber.

¹ Staff originally inquired into the business of the company after receiving a call from an Arizona resident inquiring about VFG.

Facts

VFG is a Delaware limited liability company that at all times referenced herein had its principal place of business in Arkansas. VFG has never been registered with the Department in any capacity. Andrew Gamber ("Gamber") was the managing member of VFG, owning 100% of the company as of February 20, 2013. Gamber is a resident of Arkansas and has not been registered with the Department in any capacity.² At all times referenced herein, Gamber held at least a 32% interest in VFG. Gamber has been the managing member since February 28, 2012. Richard Younkman ("Younkman") is a resident of Dallas, Texas. Younkman has not been registered with the Department in any capacity. In addition, Younkman has not been registered on CRD³ with any state securities administrator since 2009.

VFG created a platform that facilitated transactions between buyers and sellers of income streams derived from assets that have fixed payment amounts and terms, such as retirement or military pension streams ("platform"). VFG determined the present value of the income streams and sold the streams to interested buyers through the platform. VFG recruited a network of individual agents to find potential buyers and sellers and to help facilitate the sales of pension income streams. Younkman was an agent of VFG.

An individual who wanted to sell his or her income stream appointed VFG as an

² Gamber was licensed with the Arkansas Insurance Department as a resident life and accident and health insurance producer. He entered into a consent order with the Arkansas Insurance Commissioner in 2008, placing him on probation for two years for intentionally misrepresenting the terms of an insurance policy. In 2009, Gamber entered into a consent order with the Arkansas Insurance Commissioner to revoke his license for additional violations. The 2008 and 2009 consent orders are attached hereto as Exhibits A and B, respectively.

³ CRD is the Central Registration Depository operated by the Financial Industry Regulatory Authority ("FINRA"). FINRA is a self-regulatory organization in the securities industry.

authorized “buying agent” to submit a contingent offer to a third-party buyer. VFG provided the potential buyer with a “closing book” comprised of all the information gathered from the seller regarding the income stream. As represented by VFG, the information contained therein was “all of the information that the [b]uyer need[ed] to make an informed decision on whether to follow through with the purchase.” The buyer and seller did not directly communicate during this process. All information and contracts were provided by VFG. All paperwork bore the VFG logo. Furthermore, counsel for VFG encouraged an agent to complete most of the paperwork, so buyers only were required to sign the paperwork. VFG provided the buyer with a purchase application, and VFG accepted the offer to purchase on behalf of the seller.

Once an income stream was purchased, the buyer would forward the purchase-price amount to VFG which set up an escrow account with an escrow company to hold that amount and make certain distributions and payments. The buyer did not acquire title or ownership of the underlying asset that provided the income stream but acquired a contractual right to receive the income stream from the annuity or pension. Once the seller assigned the right to receive the income stream to the buyer, the seller created an escrow account in his or her name and control. The seller granted the escrow company a special, durable power of attorney enabling the escrow company to manage that account and the income-stream funds received. VFG worked with the buyer to instruct the escrow company to direct payments of a monthly amount to the buyer for the term agreed upon at the time of sale. Because the buyer did not acquire title or ownership of the underlying asset that provided the income stream, a seller could redirect the stream back to the seller at any time, leaving the buyer with only a legal claim.

The buyer had the option for VFG to facilitate payments of premiums for a life insurance policy on the seller of the income stream because the income streams are life contingent. Further, the buyer had the option to purchase a two-year contestability wrapper through VFG from an insurance company. VFG then coordinated the purchase of the life insurance policies and collateral assignments of pre-existing life insurance policies.

VFG drafted all of the required paperwork and facilitated the execution of the contracts and agreements by involved parties. Additionally, VFG received a percentage commission from all sales at closing. VFG offered and sold income streams to investors through agents, like Younkman. VFG authored and provided agents with all the documents necessary to offer and sell these income streams to investors.

From on or about February 8, 2011 to August 20, 2012, VFG facilitated approximately 317 sales in 31 states for an estimated total of \$34,245,351.48 and received an estimated \$6,724,049.71 in commissions. VFG paid additional commissions to an estimated eighty-one agents between February 2011 and July 2012. Multiple sales were made to two Arkansas residents during that time.

On or about April 20, 2012, and May 18, 2012, VFG and Younkman offered and sold income streams to a married couple residing in Horatio, Arkansas, Arkansas Residents 1 ("AR1").⁴ AR1 invested approximately \$63,000 in April and approximately \$87,000 in May with VFG and Younkman. In eight separate transactions ranging from on or about June 6, 2011, to August 2, 2012, VFG offered and sold income streams to

⁴ AR1 are senior citizens who informed Staff that the only income they had was the income stream payments and social security. AR1 were told by their agent that these investments were government insured. AR1 were not aware of the redirect risks.

an Arkansas resident, Arkansas Resident 2 ("AR2"). AR2 invested approximately \$297,000 during that time.

As part of the offer and sale of the income streams to AR1, VFG and Younkman provided a Closing Book to AR1. The Closing Book included a document prepared by VFG and titled Purchase Application. On page one of the Purchase Application it stated as follows:

A purchase of Payments is only suitable for persons who have adequate financial means and who will not need immediate liquidity from this asset. There is no public market for this asset, and we cannot assure that one will develop, which means that it may be difficult for you to sell your asset.

This statement omitted and failed to provide AR1 with full and complete disclosure of material facts, including, but not limited to, that the assignment of federal pensions or pension payments are prohibited by federal law, and the full extent of the illiquid nature of VFG's investments. Although VFG's statement used some disclosure language that is similar to that found in many private placement securities offering documents, no suitability information was ever gathered from AR1 by VFG or Younkman. Since VFG included this language on its Purchase Application, VFG clearly understood that their investments were not suitable for every investor. In spite of this fact, VFG and Younkman never asked AR1 for information typically obtained in order to make a suitability determination, such as their yearly income, liquid net worth, age, and investment experience.

On page two of the VFG Purchase Application, it discussed individual life insurance policy coverage on the seller of the income stream. In addition, on the same page of the Purchase Application it discussed wrap insurance policy protection provided

by Lloyd's of London for the first two years of AR1's investments. However, VFG omitted and failed to provide AR1 with full and complete disclosure of material facts, including, but not limited to, details on the insurance coverage or the payment of premiums for this insurance. Also, VFG did not disclose the risks that the seller's life insurance policy might not actually be purchased, the premium payments might not be sent, the seller's insurance policy might lapse, or the seller's insurance policy might not be honored for some other reason. Further, VFG provided AR1 no details or proof that VFG ever had a wrap insurance policy with Lloyd's of London on the sellers of the income streams purchased by AR1. Finally, VFG omitted and failed to disclose the fact that a life insurance policy provides no protection against the seller unilaterally stopping or redirecting the income stream payments away from AR1.

The Closing Book also included a document prepared by VFG and titled Contract for Sale of Payments. On page two, paragraph number five of the Contract for Sale of Payments it stated, "For the consideration described in the Sales Assistance Agreement, Seller shall transfer and sell to Buyer at Closing one hundred percent (100%) of Seller's right, title, and interest in and to the Payments." This was clearly a misstatement in view of federal laws prohibiting the assignment or transfer of federal pensions. Also, this section of VFG's Contract for Sale of Payments failed to adequately disclose to AR1 the risk that the sellers of income streams could at any time redirect the payments away from AR1. If the sellers redirected these income stream payments, then AR1's only recourse would be a civil suit against the sellers.

On page three of the Contract for Sale of Payments it also stated, in all capital letters, "BOTH PARTIES INTEND THAT THE TRANSACTION(S) CONTEMPLATED

BY THIS CONTRACT FOR SALE SHALL CONSTITUTE VALID SALE(S) OF PAYMENTS AND SHALL NOT CONSTITUTE IMPERMISSIBLE ASSIGNMENT(S), TRANSFER(S), OR ALIENATION OF BENEFITS BY SELLERS AS CONTEMPLATED BY APPLICABLE LAWS; HOWEVER, CERTAIN RISKS EXIST.” While this document prepared by VFG mentioned risks, VFG omitted and failed to provide AR1 with full and complete disclosure of any specific risks. In addition, this section misstated federal laws and court cases that clearly prohibit the assignment or transfer of federal pension payments sold by VFG and Younkman to AR1. Therefore, in spite of the language of this section of VFG’s Contract for Sale of Payments, the sellers and not AR1 would maintain all rights and claims to these pension payments. On page three of the Contract for Sale of Payments it stated, again in all capital letters, “BY EXECUTING THIS CONTRACT FOR SALE, BUYER AND SELLER ACKNOWLEDGE THAT BUYER AND SELLER ARE AWARE OF AND EXPRESSLY ACCEPT ALL RISKS ASSOCIATED WITH THE TRANSACTION(S) CONTEMPLATED HEREIN.” While this section of the document prepared by VFG mentioned risks, VFG omitted and failed to provide AR1 with full and complete disclosure of any specific risks.

VFG has never registered or filed a proof of exemption in accordance with the Act and has never notice filed in accordance with federal law in connection with a covered security for offers and sales of securities in Arkansas.⁵

⁵ Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security in this state which is not registered or which is not exempt from registration under the terms of the Act unless it is a covered security under the Securities Act of 1933. Certain covered securities require an issuer to file a notice of the transaction with the Department prior to or within 15 days of a sale in Arkansas.

Securities Analysis Under Arkansas Law⁶

Ark. Code Ann. § 23-42-102(17)(A) defines “securities” for the purposes of the Act and includes in that definition the term “investment contracts.” The Act was promulgated to protect investors, and it utilizes a broad definition of securities to determine which transactions are subject to the Act. *Carder v. Burrow*, 940 S.W.2d 429, 431 (Ark. 1997) (citing *Schultz v. Rector-Phillips-Morse, Inc.*, 552 S.W.2d 4, 8 (Ark. 1977)). In *Schultz*, the Court held that the definition of a security under the Act should not be given a narrow construction but that “it is better to determine in each instance from a review of all the facts, whether an investment scheme or plan constitutes an investment contract... within the scope of the statute.” 552 S.W.2d at 10.

When faced with the question of whether an investment is an investment contract and therefore a security, courts in Arkansas apply the five-prong risk capital test set out in *Smith v. State*, 587 S.W.2d 50 (Ark. Ct. App. 1979). The five elements of the risk capital test are “(1) the investment of money or money's worth; (2) investment in a venture; (3) the expectation of some benefit to the investor as a result of the investment; (4) contribution towards the risk capital of the venture; and (5) the absence of direct control over the investment or policy decisions concerning the venture.” *Id.* at 52. Furthermore, the United States Supreme Court has defined an investment contract as a “contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party...” *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946).

In *Grand Prairie Sav. and Loan Ass'n, Stuttgart v. Worthen Bank and Trust Co.*,

⁶ For a more detailed discussion of the investment contract analysis see Order No. S-12-0015-13-OR02, *In the Matter of VFG, LLC f/k/a Voyager Financial Group, LLC*, Andrew Gamber, Kevin McNay, Robert Henry, and Jonathan Sheets, Conclusions of Law.

N.A., 769 S.W.2d 20, 22 (Ark. 1989), the Arkansas Supreme Court noted that the *Smith* test is substantially the same test used in the federal courts and cited *Union Nat'l Bank v. Farmers Bank*, 786 F.2d 881 (8th Cir. 1986), involving two Arkansas banks and applying the *Howey* test in its analysis. However, as highlighted in *Schultz*, the Court rejected an express adoption of this federal test in favor of a more flexible case-by-case analysis, 552 S.W.2d at 10.

As required by the *Smith* risk capital test, the buyers contributed to the risk capital of the venture by paying money to receive the income-stream payments that were reassigned from the original owner and seller to the buyer for a period of time. The purchase price was then redistributed to the agents and VFG to pay commissions, with the remaining balance going to the seller. The full amount of the purchase price was not forwarded directly to the seller. Money was first paid in the form of commissions to VFG and its agents before a lesser amount was forwarded to the seller. The buyer was then at risk of the income streams being improperly redirected to the seller.

Additionally, the final requirement of the *Smith* risk capital test was satisfied, as there was an absence of direct control over the investment as well as an absence of control over policy decisions concerning the venture. VFG connected the buyers and sellers who would not otherwise transact business, if not for VFG's coordination and involvement in the venture. Although a contract dictated that the income stream was assigned to the buyer, the buyer had no actual control over the income stream. If the income stream was redirected and the buyer was no longer receiving the income, VFG stepped in, contacted the seller to determine the problem, and tried to remedy the

problem for the buyer. VFG reached out to the seller and relayed information back to the buyer. One buyer stated that there was never direct involvement with the seller throughout the income-stream transaction.

VFG and its agents facilitated all contact and transactions. In addition, all paperwork between the buyer and seller was on VFG letterhead and was reviewed by VFG. VFG vetted the seller and verified that the information provided by the seller was correct. VFG verified that there was actually a pension income stream and received a credit report from the seller to ensure there were no liens on the income stream. Additionally, VFG determined the value of the income stream. Examining the totality of VFG's responsibilities and efforts, the return generated to the buyer depended on VFG's managerial skills in conducting pre-closing investigations and analyses, verifying all information was in place, verifying that there was a life insurance policy either purchased or collaterally assigned in case of the death of the seller, and providing all necessary paperwork to the buyers and sellers to facilitate the transaction.

Given that the Arkansas Supreme Court has not expressly adopted *Howey* in favor of a more flexible case-by-case approach in order to avoid a narrow construction of the Act, the transactions described herein were investment contracts pursuant to the risk capital test. As Ark. Code Ann. § 23-42-102(17)(A)(xi) defines investment contracts as securities, the transactions described herein are securities.

Concerns about Pension Advance Schemes

VFG used a network of agents to sell risky products across the United States and had multiple website domains to amass pensioners who were interested in getting paid

a lump sum for their future pension payments.⁷ Staff received information from several investors,⁸ many were older Americans, who used a substantial portion of their savings or retirement to purchase what they thought was a “low risk” product. Many investors were not informed about the redirect risk and were left with a financial shortage when the pension income stream was redirected for whatever reason. Further, many investors purchased more than one pension income stream through VFG.

Whether a scheme is considered an investment contract and therefore a security is determined by case law tests adopted by various courts. Depending on what standard or test a state court adopts, enforcement against a pension advance company may not be an option under the state’s securities laws. Since not every state has an investment contract analysis similar to Arkansas, not every state considers these transactions to fall within the ambit of securities regulation. Additionally, this analysis does not speak to whether these transactions would be considered securities under federal law. Fortunately, Arkansas courts use the risk capital test, and the Department was able to take enforcement action against VFG since the transactions are investment contracts under Arkansas law.

Pension income streams are relatively new on the market and present a unique challenge from a regulatory perspective because of the diverse case law regarding investment contracts. Although VFG’s principal place of business was located in Arkansas, most sellers, buyers, and agents were located in other states. Nation-wide investment schemes like the VFG transactions are becoming more common because of the ease of communication and dissemination of information through the internet. The

⁷ A list of VFG’s website domains under management in April 2011 is attached as Exhibit C.

⁸ Redacted investor letters are attached to this testimony as Exhibits D-H.

Department's orders concerning VFG only apply to any transactions the company conducts from Arkansas and may not extend to other states.

Conclusion

The Department encourages all potential investors, especially older Americans, to investigate before investing. Many investors were approached about this product by someone they already knew and with whom they had a professional relationship. The two Arkansas investors bought this product from agents through whom they had already purchased investments in the past. Both agents were located in Texas. Older Americans, especially those already in retirement, are exposed to great financial risks when investing in products such as these. Educating the investing public about the risky nature of these products is imperative going forward.

Thank you for your attention and for providing me with the opportunity to testify before the Committee today. I would be happy to answer any questions you may have.

PENSION ADVANCES: LEGITIMATE LOANS OR SHADY SCHEMES?

Senate Special Committee on Aging

September 30, 2015

Testimony provided by:

Stuart T. Rossman

Director of Litigation

National Consumer Law Center

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Chairman Collins, Ranking Member McCaskill, and Members of the Senate Special Committee on Aging, thank you for inviting me to testify today regarding pension advances and to report on recent cases involving Military Pension Assignments where I have been counsel of record on behalf of disabled and retired veterans of our armed forces.

I am the Director of Litigation at the National Consumer Law Center.¹ For the past 16 years I have been responsible for coordinating and litigating cases at NCLC on behalf of income and/or age qualified individuals, primarily in the areas of consumer financing and affordable housing, in state and federal courts throughout the United States. Prior to my work at the National Consumer Law Center, I served as the Chief of the Trial Division and the Business and Labor Protection Bureau of the Massachusetts Attorney General's Office and worked in private practice. I testify here today on behalf of the National Consumer Law Center's low-income and elderly clients. On a daily basis, NCLC provides legal and technical assistance on consumer law issues to legal services, government and private attorneys across the country in order to promote economic justice for all consumers.

I. Military pension scams are stealing income from debt-burdened veterans.

In May, 2003, NCLC was researching consumer scams perpetrated on active military personnel and ultimately issued a report entitled *In Harm's Way-At Home: Consumer Scams and*

¹ The **National Consumer Law Center, Inc.** (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, 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. NCLC publishes a series of twenty practice treatises on consumer credit laws, including *Unfair and Deceptive Acts and Practices* (8th Ed., 2012), updated at www.nclc.org/library, and *Cost of Credit: Regulation, Preemption, and Industry Abuses* (4th Ed., 2009), updated at www.nclc.org/library, as well as periodic reports on a range of topics related to consumer credit issues and low-income and elderly consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income and elderly people, conducted training for thousands of legal services and private attorneys on the law and litigation strategies to deal with predatory lending, unfair debt collection practices and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. This testimony was written by Stuart T. Rossman, Director of Litigation at NCLC.

*the Direct Targeting of America's Military and Veterans.*² While not the primary focus of this investigation, the report disclosed that the Judge Advocate General Corps felt that some of the greatest abuses they were seeing concerned the solicitation of retired military personnel to gain access to their pension payments.

What NCLC discovered was that companies and individuals were targeting veterans' benefits, usually by offering an up-front cash payment in return for several years of the veteran's monthly benefit, thus creating a growing threat to elder veterans and their dependents. These schemes produced huge profits for the scammers, deprived veterans of funds they needed for their long-term financial security, and, NCLC contended, were illegal.

Veterans receiving retirement and disability benefits are highly attractive targets for financial exploitation:

- Retirement and disability benefit payments are regular, very dependable, and long-term. Furthermore, it is very easy to arrange automatic transfer of the funds each month through "allotments" set up through the Defense Finance and Accounting Servicer. A company that can convince a veteran to sign over rights to his or her pension payments, and can enforce such an agreement, faces an extremely low risk of non-payment. The companies often reduce this risk even further by requiring the veteran to buy life insurance and designate the company as the beneficiary.
- Veterans are easy to reach through affinity marketing and advertising in targeted publications such as the Military Times Network. Although these publications are produced by a private, for-profit corporation, many service members and veterans perceive them to be "official" and assume that advertisers are screened or approved in

² <https://www.nclc.org/images/pdf/.../report-scams-facing-military.pdf>

some way. The companies may also use the internet, relying upon lead generators, referral networks and commissions to reach more potential victims.³

- Veterans may have, or perceive themselves to have, unusually heavy debt burdens or poor credit as a result of the financial strains of deployment, frequent relocations and other challenges of military service. Veterans, many of whom enlisted at a young age, may also be less familiar with the landscape of legitimate lenders and financial institutions.

A number of companies targeted military veterans by offering lump sums in exchange for the veteran's promise to redirect monthly benefits payments directly to the company for a fixed number of years (8 years is a typical time frame). The cost of these transactions can be astronomically high – NCLC has found agreements with effective APRs of 27% all the way up to 106%. These typically are not small-dollar transactions – the agreements NCLC has examined involved principal amounts that sometimes exceed \$100,000, and on average fall in the range of \$40,000-\$55,000.

The companies try to characterize the transactions as sales or assignments rather than loans for two reasons. First, as the owner of one such company admitted in a deposition, they want to make the transaction non-dischargeable in bankruptcy. Where a true assignment or sale has taken place, the purchaser may have a property interest in the income stream that is unaffected by the bankruptcy; in other words, the obligation effectively cannot be discharged by

³ The then Internet Home Page of Veterans First Financial Services was highlighted in the *Harm's Way* report. The advertisement featured an undulating American flag and, at the top, an eye-grabbing, full-color display of military insignias in motion across the screen. A three-part message flashed over those insignias: "You've worked hard-invest your money the way YOU want---If you're a retired veteran, VFFS, Inc. can help!" A copy of the screen grab from the VFFS website is attached along with a copy of a print advertisement from the November 29, 2004, edition of Air Force Times promoting "Immediate Cash!!! Retired Military Financial Services pays cash now for your military pension. Regular pensions, VA pensions and VSI pensions. Transaction time can be as short as 10 working days. NO upfront fees."

the veteran. Second, the companies seek to avoid disclosure requirements and any usury limits imposed by state law.

II. Henry v. Structured Investments Co. LLC

Darryl Henry's story illustrates the cost of these transactions. Mr. Henry retired as a Chief Petty Officer after 20 years of military service with a combined pension and disability payment of just over \$1,000 per month. Approximately a year and a half later, Mr. Henry began considering purchasing a home for himself and his wife. Mr. Henry tried to comparison shop; he did research on the internet to see what kind of interest rate he could expect to get. Because Mr. Henry already was working to pay off quite a bit of debt, he discovered his credit score was too low to qualify him for the best rates.

Trying to find a better option, he reached out to Retired Military Financial Services which he had seen advertised in the Navy Times (an advertisement similar to the RMFS advertisement attached to this testimony. *See*, Fn 2, *supra*.). RMFS introduced Mr. Henry to Structured Investments Co. ("SICO") and SICO gave him various estimates of lump-sum payments, based on how much of his pension he signed over. None of the estimates included a disclosure of the effective interest rate. If they had, he would have seen that it was about 28%, far higher than most subprime mortgages and a violation of the California usury laws.

SICO assured Mr. Henry that the transaction was not a loan, and used as a selling point the fact that the transaction would not appear on Mr. Henry's credit report, taking advantage of Mr. Henry's concern about his low credit score. Mr. Henry agreed to direct his entire monthly benefit to the company for 8 years in exchange for a lump sum payment of just over \$40,000. He also paid for a life insurance policy for the benefit of the company. Mr. Henry used the funds he received to pay off his other debts, in hopes that it would improve his credit score, and then he

bought a home with a loan from a conventional lender. Mr. Henry's attempt to be responsible and to improve his credit before buying a house ended up costing him tens of thousands of dollars more than he would have paid if he had not entered into the pension transaction.

Mr. Henry subsequently read a copy of the *In Harm's Way* report and contacted NCLC. NCLC partnered with private attorney Rob Bramson in bringing suit in California Superior Court (Santa Ana, CA, Orange County) on behalf of Mr. Henry and other retired and/or disabled military veterans similarly situated, against SICO and its principals, Ronald Steinberg and Steven P. Covey, individually and d/b/a Retired Military Financial Services.⁴

In his Complaint, Mr. Henry alleged that the defendants engaged in a pattern and practice of entering into transactions with retired and disabled veterans which contain numerous unconscionable and otherwise unenforceable provisions, and which were disguised loan transactions bearing usurious effective interest rates. Furthermore, in connection with such transactions, Mr. Henry alleged that the defendant's documents purported, in effect, to obtain assignments of military pay which were unenforceable in light of the anti-assignment provisions found at 37 U.S.C. §701(c)[assignment of military pension pay of enlisted military personnel upon retirement] and 38 U.S.C. § 5301(a)(1); (3)(A) and (C)[assignment of disability payments for all military veterans regardless of rank].

The Complaint asserted claims that the contracts between the plaintiffs and SICO violated federal law and were void from their inception. The Complaint also claimed that the agreements also were, in substance and effect, usurious loan contracts. Finally, the Complaint claimed that the agreements requiring Plaintiff and class members to assign their military pension and disability pay were expressly prohibited by federal law and, therefore, were unconscionable,

⁴ A copy of the Henry Complaint can be found at http://www.nclc.org/images/pdf/litigation/henry_complaint.pdf

unfair and unlawful violations of the California Unfair Competition Law (“UCL”).

In May, 2011, after certifying a class of plaintiffs, the Superior Court of California, County of Orange, Judge David Velasquez presiding, tried the liability issues in the Henry case. On August 22, 2011, the Judge issued his rulings.⁵

The Court found that “[i]n the present case, the statutes at issue were passed to insure that retired and disabled military personnel actually receive the benefits provide to them from being lost through either the predation of others or their own poor judgement.” Here, “[a]ccording to the Agreements, the pensions never actually reached the class members. Instead, the Agreements provide that a perfected immediate right to possession of the pension and disability payments arises the moment the benefits are deposited in the joint bank accounts, which are completely within SICO’s control.”

Thus, the Court held that “the purposes of the law governing the anti-assignment provisions of 38 U.S.C. § 5301 and 37 U.S.C. § 701 would be thwarted if the court required all of the traditional elements of assignments to be present before calling the transactions assignments.” In light of that conclusion, the court chose “to follow the rule of statutory interpretation that remedial statutes are to be interpreted broadly to protect the purposes for which the law was enacted by the legislature” and, therefore, deemed the SICO agreements, in fact, to be assignments prohibited by federal law.⁶

Because the SICO agreements violated federal law, the Court ruled that “they are unlawful under the unlawful prong of the UCL.” Secondly, “because the defendant SICO used the unlawful Agreements to obtain the class members’ government benefits which the law meant

⁵ A copy of the Henry Decision can be found at <http://www.nclc.org/images/pdf/litigation/Henry.pdf>

⁶ The Court expressly ruled that the Agreements were not loans because the holding that the Agreements were assignments would be inconsistent with a finding that the Agreements were loans.

to protect, and mischaracterized the true nature of the Agreements”, the defendant’s “program” constituted “a sharp practice” and was “unfair with the meaning of the UCL.” Finally, the Court found the defendant’s practice to be “unscrupulous and substantially injurious to consumers in general and to members of the class in particular.”

The Court could find “no lawful utility to SICO’s program of acquiring the pension payment of the class members through the use of its unlawful conduct” and declared the “Agreements to be prohibited and unenforceable.” The Court further found that the plaintiff and the class were entitled to injunctive relief “enjoining SICO, and its agents, employees, officers, directors, and any person or entity working in concert with it from using the Agreements.” Finally, the Court found that the plaintiff and the class were entitled to restitution from SICO in the amount of \$2,927,619.81.

Unfortunately, SICO apparently had no assets available to satisfy the judgment and the company, as well as its principals, subsequently declared for bankruptcy relief. The few class members who had not completed their 8 years of payments had the benefit of stopping the transfer of their pensions, but the rest of the victims (including Mr. Henry) were left to seek recourse in Bankruptcy Court.

III. Conclusion

Court decisions have not been consistent in determining whether Military Pension transactions are loans, assignments, or loans secured by assignments. The transactions should be invalidated as assignments forbidden by federal law, but they also should be subject to usury, Truth in Lending disclosures and other remedies associated with loan statutes.

However, as Mr. Henry’s story illustrates, litigation, even when veterans prevail, is an inadequate response to these abuses. Pro-active, aggressive enforcement is required to prevent

these companies from targeting veterans in the first place. The companies that target veterans for these illegal transactions are elusive; they change names and websites frequently and use nested structures to hide the identities of the individuals involved. A quick search of the internet will disclose that many of these entities continue to prey upon veterans to this day.

NCLC and other consumer advocates remain vigilant. However, government enforcement agencies, like the CFPB, also should continue to use creative, aggressive enforcement tactics, such as working with DFAS to monitor allotments and direct deposit instructions for evidence of new scams, and execute 'stings' on companies that offer illegal military pension products on the internet or through advertisements in affinity publications.

Written Testimony to the United States Senate Special Committee on Aging**Maria Walden, Director of Legislation and Policy****Public School and Education Employee Retirement Systems of Missouri (PSRS/PEERS),
Jefferson City, Missouri**

Chairman Collins, Ranking Member McCaskill, and other distinguished members of the Senate Aging Committee;

My name is Maria Walden. I am the director of legislation and policy for the Public School and Education Employee Retirement Systems of Missouri (PSRS/PEERS). There are over 575,000 Missouri members of public defined benefit plans that are covered by the only statewide law that bans pension advances to individuals receiving a public pension.

Since 1946, The Public School and Education Employee Retirement Systems of Missouri (PSRS/PEERS) have worked in partnership with our member school districts to provide strong, stable and secure retirement benefits to over 250,000 Missouri public school teachers and education employees. This guaranteed retirement income for public school employees helps attract and retain talented education professionals for Missouri's public schools and the communities they serve.

As of June 30, 2015, PSRS/PEERS paid more than \$2.5 billion annually in benefits to over 82,000 retirees and beneficiaries. Nearly 90% of those benefits went to retirees residing in Missouri.

For the past 69 years, PSRS/PEERS continue to be a strong, financially stable, defined benefit plan for its members and beneficiaries. As of June 30, 2014, the Systems are actuarially pre-funded at 82.8% and 85.1%, respectively (the actuarial funded ratio of PSRS and PEERS is expected to improve as of June 30, 2015) and currently have over \$37.4 billion in invested assets. It is the largest public retirement plan in the state, the 44th largest public pension plan in the nation, and 110th largest institutional investor in the world. The quality of PSRS/PEERS' plan design and administration has been nationally recognized by the Public Pension Coordinating Council.

PSRS/PEERS is governed by a seven-member board of trustees. Board members include: 3 elected PSRS members, one elected PEERS member and three gubernatorial appointees (one of whom must be a PSRS or PEERS retiree.) The Systems are independent trust funds and the Board is charged by law with the administration of the Systems. The Board has the fiduciary responsibility to act in the exclusive interest of the members of the Systems, to maximize the total return on investments within prudent risk parameters and to impartially administer the plans in accordance with applicable law.

Due to the independent nature of the trust fund, staff is limited in the ability to testify in support of matters in which the Board has not yet taken an official position. The comments made today are made solely for informational purposes and require that the Systems remain neutral on this issue.

During the fall of 2013, there were several national media reports on the predatory practice of pension advance lenders across the nation. Pension advances are a financial instrument where an individual with a pension receives an up-front, lump-sum payment in exchange for contracting away a portion of that individual's pension payment.

The news reports during that time stated the monthly payments made by the borrower can be subject to effective interest rates of 27 to 106 percent. In some cases, borrowers are required to take out a life insurance policy and name the pension advance company as the sole beneficiary to ensure payment of the advance.

In September of 2013, State Treasurer Clint Zweifel went on record as being concerned about the predatory practice of pension advance companies in Missouri. In an effort to protect Missourians, State Treasurer Zweifel established the Pension Advance Portal on his website to allow public pensioners the ability to report any concerns or problems.

In September 2013, the Systems held several internal meetings to discuss the impact of these pension advance companies on our members. Any time PSRS/PEERS see firms or organizations that might attempt to take advantage of our members, we become concerned and work to ensure that our members are aware of these potential challenges. In light of the media reports on these types of services, PSRS/PEERS took a proactive stance and updated the website to educate members about pension advances and the current statutory protections that were in place.

In addition, PSRS/PEERS management notified staff regarding pension advances to ensure that retirees would be informed of this type practice. (PSRS/PEERS meets with various retiree groups around the state in 14 different regions at least 24 times a year to educate members and beneficiaries about the System, the benefit of their pension and potential challenges and threats that are facing the Systems and members.) Teachers and educators work extremely hard to serve the children of Missouri. In addition, they contribute a great deal of their personal income to save and fund their retirement plan (14.5% contribution rate for members; 14.5% contribution rate for employers covered by PSRS).

One of the challenges the System faced was educating the members and public on the statutory protections that were already in place. PSRS and PEERS are governed by sections 169.010, et seq. and 169.600, et seq. PSRS and PEERS members are covered by anti-alienation and anti-assignment provisions in Section 169.090 and Section 169.690, respectively. As you are aware, an anti-alienation clause is a provision in the governing documents for an arrangement such as a trust that specifies that the beneficial or equitable owner of the property held in that arrangement cannot transfer the interest to a third party. Those provisions prevent PSRS/PEERS from paying

benefit payments to anyone other than the retiree and from accepting an “assignment” of the retiree’s benefit payment. Therefore, PSRS/PEERS by statute is prohibited from paying benefit payments directly to a pension advance company. Many of the statewide Missouri plans provide similar protection in their statutes.

However, after receipt of the benefit payment from PSRS or PEERS, the retiree can use his or her pension benefit in any manner. Therefore, a PSRS or PEERS retiree would be able to enter into a contract with a pension advance service as long as that contract did not require PSRS or PEERS to make a payment to anyone other than the retiree.

In October 2013, PSRS/PEERS received a request from the Secretary of State’s Missouri Securities Division asking for clarification on pension advances and whether the Systems had any knowledge of a member being impacted by such an arrangement. The Systems’ general counsel provided a detailed response (see attachment) to the Secretary of State’s office, which explained the statutory protections that were already in place in section 169.090, RSMo and 169.690, RSMo.

On January 7, 2014, at the request of State Treasurer Clint Zweifel, Representative Tony Dugger (R-141) and Senator Mike Cunningham (R- 33) sponsored HB 1217, which would prohibit pension advances from being sold in Missouri to public pensioners.

HB 1217 specified that the right of a person to a public employment retirement benefit cannot be transferred or assigned, at law or in equity. It further required that none of the moneys paid or payable or rights existing under a plan can be subject to execution, levy, attachment, garnishment, or other legal process, unless expressly authorized by the law that establishes the plan or that is specifically applicable to the plan.

A pension assignee is prohibited from using any device, scheme, transfer, or other artifice to evade the applicability and prohibition of these provisions. Any contract or agreement made in violation of these provisions is considered void and all sums paid or collected by an assignee must be returned. This bill also allowed for the Attorney General to bring an action to enforce the restitution authorized under these provisions within five years after a violation.

During the legislative process, proponents of HB 1217 testified that the bill served as a good consumer protection provision for all Missouri’s public pension retirees. Proponents testified that the bill prohibited a person’s Missouri public employment retirement benefit from being transferred or assigned to a pension advance service and would keep the benefit for what it is meant to be, a retirement benefit. The bill created a ban on pension advance lenders and would ensure that pensions earned by teachers, firefighters, police officers and other public servants are protected from such a practice.

One of the reasons cited for the need for this legislation was to protect all of Missouri’s public pensioners especially any of those members whose plan might not have an anti-assignment provision.

Testifying for the bill were Representative Dugger; Clint Zweifel, Missouri State Treasurer; Missouri Bankers Association; Missouri Credit Union Association; Office of the Missouri Attorney General.

There were no groups that opposed the legislation.

SCS HCS HB 1217 was truly agreed to and finally passed on May 14, 2014. It was approved by Governor Jay Nixon on July 9, 2014 and went into effect on August 28, 2014.

Since implementation of this law, PSRS/PEERS is not aware of any retiree who has sold an income stream from all or part of his or her pension. PSRS/PEERS has also not received a request from a retiree to make a payment to a pension advance service or into an escrow account.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Questions for the Record

**U.S. Senate Special Committee on Aging
“Pension Advances: Legitimate Loans or Shady Schemes?”
September 30, 2015
Questions for the Record
Ms. Kaycee L. Wolf**

Chairman Susan M. Collins

Question:

It’s my understanding from the attached documents which you provided to the Committee that at least one employee within Voyager Financial Group, LLC resigned in protest over what he saw as fraudulent activity by the company. Can you describe how this came to your attention?

Response:

I discovered the email while reviewing VFG’s business emails that were turned over to Staff during the Department’s investigation. I then gave the email to the Committee pursuant to a subpoena.

Statements for the Record

June 18, 2012

VFG, LLC
1431 Merrill Dr. Suite H
Little Rock, AR 72211

Jonathan Sheets
8201 Cantrell Rd. Suite 370
Little Rock, AR 72227

To VFG Members and Officers:

As of this 18th day of June, 2012, I hereby resign my position as General Counsel of VFG, LLC. My resignation is due to continued, allegations of unethical behavior on the part of a majority of the members of this company, Mr. Drew Gamber. Most recently, Mr. Gamber made it clear that Mr. Gamber had always maintained that the default rate of this products which VFG services is one percent (1%). This is a serious misrepresentation which would very likely be seen as fraud in a court's eyes especially in light of the fact that Mr. Gamber must know, as do the other owners of this company, that the default rate is close to thirty percent (30%) if not higher. This sort of allegation falls in line with similar allegations from other independent contractors such as Mr. Gamber has represented that these products are "guaranteed" and that VFG will purchase all defaulting cases. In each case it seems Mr. Gamber was very careful not to make record of such misrepresentations making them only over the telephone, however, the number of individuals who have made similar allegations cannot be denied some attention. To do so would be to ignore the problem.

I had, until now, thought that all notions of misrepresenting this service and the products to which it is applied had stopped and been corrected. I now see that I have been mistaken. This is a problem for which I have no solution as the actions of the members in representation of this company, contrary to my advice, are out of my control.

In light of the recent evidence and the seemingly pervasive pattern of serious misrepresentations, I must resign immediately as I cannot continue to be associated with such unethical business practices and such low standards of integrity.

I appreciate this opportunity. It has been a tremendous learning opportunity.

Sincerely,



Jonathan Sheets

6/18/12

From: Jonathan Sheets <jsheets@voyager-financial.com>
Sent: Monday, June 18, 2012 12:36 PM
To: bkogut@voyager-financial.com; 'G.D. Gamber'; khelman@voyager-financial.com
Cc: Kevin McNay; Christian Parks
Subject: JSheets Resignation
Attachments: Resignation Letter - Sheets.pdf; Default Notice - Sheets.pdf
Importance: High

On advice of VFG's counsel, I am sending you these letters because you are currently a member of VFG, LLC. I also have included the Directors of the Company.

Jonathan Sheets 
General Counsel

*Toll Free: 888.551.2992 x215
Fax: 888.308.6989
Email: jsheets@voyager-financial.com
www.Voyager-Financial.com*

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BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSASIN THE MATTER OF
ANDREW PAUL GAMBER
LICENSE NO. 255440

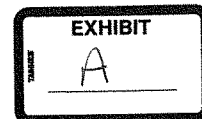
A.I.D. NO. 2008- 028

CONSENT ORDER

On this day Julie Benafield Bowman, Arkansas Insurance Commissioner ("Commissioner"), and Andrew Paul Gamber, ("Respondent"), reached an agreement concerning the resident insurance producer's license issued to Respondent by the Arkansas Insurance Department ("Department"). The Commissioner was represented by Nina Samuel Carter, Associate Counsel. The Respondent voluntarily and intelligently waived his right to a hearing and consented to the entry of this Consent Order. The parties agreed as follows:

FINDINGS OF FACT

1. Respondent is currently licensed in Arkansas as a resident life and accident and health insurance producer, license number 255440. Respondent's last address of record at the Department is 2722 E. Nettleton Avenue, Jonesboro, AR 72401.
2. Respondent was terminated by Bankers Life Insurance Company ("Bankers") in April 2006 due to Respondent's violation of the established policies and procedures of Bankers.



3. According to a complaint filed by M.J. Fox; Jr., on or about February 15, 2006, Respondent replaced four annuities the Fox family had in order to obtain a higher rate of interest. The transfer resulted in approximately \$4,000 in surrender charges. Further, Mr. Fox alleges that there are irregularities in the signatures of his father, mother, sister, and himself in the paperwork for the transfer of annuities.

4. According to a complaint filed in June 2006 by Gail Reynolds, her parents, Mack and Lola Reynolds, believed that they had purchased Long Term Care policies with Bankers Life from the Respondent. Subsequently, the Reynolds discovered they only had Convalescent Care, which is short term care of 180 days. The Reynolds feel that they were misled by the Respondent.

5. According to a complaint filed in January 2006 by Jimmy and Linda Weatherspoon, their policy applications and medical questionnaires did not contain accurate information. The Weatherspoons discovered that their life insurance policies had incorrect birthdates and that although they had told Respondent that Mr. Weatherspoon had asthma-emphysema and that Mrs. Weatherspoon was diabetic and had a seizure disorder, the "no" boxes were incorrectly checked on the medical questionnaire portion of the policy application. Respondent did not ensure that the information on the insurance applications were correct.

6. According to a complaint filed in July 2006 by Donald and Martha Williams, Respondent misled them when he initially sold them their Bankers policies. The Williamses thought they were purchasing IRA's, although they

were actually sold Bankers Universal Life Policies. Respondent assured the Williamses that they could access their money without penalty. However, with a Universal Life Policy their money was not invested and not only could they not access their money, they were incurring additional premium charges. Upon receiving premium notices in the mail, they contacted Respondent, who advised them to disregard the notices. Mrs. Williams contacted Bankers several times for an explanation of the policy and finally concluded that Respondent misrepresented the terms and types of policies he sold them. Respondent later met with the Williams in an attempt to move their annuities from Bankers to Allianz. An application was submitted to Allianz for this transfer. However, the Williams claim that they never intended to, nor knowingly signed an application for Allianz.

7. For the above actions, the Department alleges that Respondent is in violation of the Insurance Code for: Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance, in violation of Ark. Code Ann. § 23-64-512(a)(5); Forging another's name to an application for insurance or to any document related to an insurance transaction, in violation of Ark. Code Ann. § 23-64-512(a)(1 O); Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation or financial irresponsibility, in violation of Ark. Code Ann. § 23-64-512(a)(8); Churning of business by replacing an existing policy that is not for the benefit and betterment of the insured, in violation of Ark. Code Ann. § 23-66-206(2); Making false or fraudulent statements or

representations in, or relative to, an insurance policy, in violation of Ark. Code Ann. § 23-66-206(8); Making false or fraudulent statements or representations in, or relative to, an application for insurance, in violation of Ark. Code Ann. § 23-66-305; Failing to provide reasonable and professional service to each insured or prospective insured, in violation of Ark. Code Ann. § 23-66-307(a)(1) ; Failing to exercise discretion and good faith in the insurance sales presentation or transaction, in violation of Ark. Code § 23-66-307(a)(2); and Failing to improve upon existing insurance by providing better coverage or a more suitable product for the needs of the insured, their family, or-business, in violation of Ark. Code Ann. § 23-66-307(a)(3).

CONCLUSIONS OF LAW

1. That the Commissioner has jurisdiction over the parties and over the subject matter herein pursuant to Ark. Code Ann. § 23-61-103.

2 That pursuant to Ark. Code Ann. § 23-64-512(a) and § 23-64-216(d)(1) , if the Commissioner finds that one or more grounds exist for the suspension or revocation of any license under § 23-64-216(a)(1), the Commissioner in his or her discretion may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000) per violation or up to five thousand dollars (\$5,000) per violation if willful misconduct on the part of the licensee is found.

3. That Respondent has been made fully aware of his right to a hearing and has voluntarily and intelligently waived said right and consents to the entry of this Consent Order.

THEREFORE, in consideration of these Findings of Fact and Conclusions of Law, it is hereby ordered and agreed that:


A. Respondent's resident Arkansas insurance producer's license(s) is placed in probationary status for two years from the date of this Order. As part of the Probation, Respondent is required to take one additional hour of Ethics Continuing Education in his first year of probation, in addition to the hour of Ethics required in Ark. Code Ann. § 23-64-301. The additional hour of Ethics will not count toward the Ark. Code Ann. § 23-64-301 Continuing Education requirement. Respondent must provide documentation of completing the additional hour of Ethics to both the Licensing Division and the Legal Division of the Arkansas Insurance Department within one year from the date of this Order.

8. Pursuant to Ark. Code Ann. § 23-64-216, Respondent shall also pay an administrative penalty of \$2,000. The administrative penalty shall be paid within 90 days from entry this Order.

C. Respondent is advised that probationary status means that the imposition of additional insurance license sanctions that the Commissioner may impose by law or by informed consent upon him is suspended contingent upon his compliance and good conduct during this probationary period. See Ark. Code Ann. §§ 23-64-216 and 23-64-512.

D. If Respondent violates the terms of this probation or any provision of the Insurance Code during the probation period, Respondent's license will be suspended and a revocation hearing will immediately be set and will result in statutorily imposed sanctions. See Ark. Code Ann. §§ 23-64-216 and 23-64-512.

IT IS SO ORDERED THIS 14th day of April, 2008.


JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS


Andrew Paul Gamber

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSASIN THE MATTER OF
ANDREW PAUL GAMBER
LICENSE NO. 255440

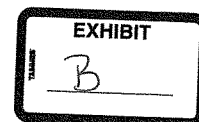
A.I.D. NO. 2009-053A

CONSENT ORDER

On this day Jay Bradford, Arkansas Insurance Commissioner ("Commissioner"), and Andrew Paul Gamber, ("Respondent"), reached an agreement concerning the resident insurance producer's license issued to Respondent by the Arkansas Insurance Department ("Department"). The Commissioner was represented by Nina Samuel Carter, Associate Counsel. The Respondent voluntarily and intelligently waived his right to a hearing and consented to the entry of this Consent Order. The parties agreed as follows:

FINDINGS OF FACT

1. Respondent was licensed in Arkansas as a resident life and accident and health insurance producer, license number 255440. Respondent let his license lapse on March 17, 2009. Respondent's last address of record at the Department is 2702 S. Culberhouse, Jonesboro, AR 72401.
2. On or about April of 2009, the Respondent contacted Florean Kellerman regarding her annuities with Allianz. According to Kellerman, Respondent advised her that her money was not safe with Allianz due to lawsuits over the products and that she needed to get out of the S&P (equity indexed annuity). He further advised her that she needed to take her money out of the Allianz annuities and place it in CDs. Respondent did not advise Kellerman that he did not have an Arkansas Insurance producer's license.



3. Kellerman later received notification from Allianz stating that her annuities totaling about \$57,000 had been moved to Liberty Life Insurance Company into an equity indexed annuity instead of being placed in a CD. Respondent was never appointed with Liberty Life Insurance Company.

4. When questioned by the Department regarding this transaction, Respondent told the Department that he was not involved in this transaction and that Agent William Gay had actually handled it.

5. Agent William Gay advised the Department that Respondent had contacted him about selling the policy. Gay stated that Respondent sold the policy to Kellerman and then submitted the application to Gay for Gay's signature. Respondent previously had advised Gay that though he was not licensed, he was currently able to solicit insurance business and was awaiting a "solicitor's license" from the Department that would allow him to sell insurance products, but would not allow him to submit the products to the companies. Gay stated, but later retracted, that he had signed several policies submitted to him by Respondent.

6. The Department was able to intervene and have the transaction reversed and restore consumer with her previous policies.

7. At the time of Respondent's advice and solicitation of Kellerman and at the time of the purported issuance of the above described annuities, the Respondent did not have an insurance producer's license at the Department. Respondent had been licensed with the Department under license #25540 as a resident life and accident and health insurance producer. This license expired on March 17, 2009. In Respondent's procurement of the above described annuities, Respondent was engaged in conducting insurance business in this State. Further, the Department does not issue any type of license called a "solicitor's license."

8. The Department has previously issued a Consent Order on April 14, 2008, against Respondent, AID Order No. 2008-028, which alleged that Respondent violated Ark. Code Ann. § 23-64-512(a)(5), § 23-64-512(a)(10), § 23-64-512(a)(8), §23-66-206(2), § 23-66-206(8), § 23-66-305, § 23-66-307(a)(1), § 23-66-307(a)(2) and § 23-66-307(a)(3). This Order placed Respondent on probation for a period of two (2) years, ordered Respondent to take one additional hour of Ethics Continuing Education in his first year of probation, and ordered Respondent to pay an administrative penalty in the amount of \$2,000.00. The Order also provided that if Respondent violated the terms of the probation or any provision of the Insurance Code during the probation period, Respondent's license would be suspended and a revocation hearing would be set and result in statutorily imposed sanctions.

9. The Department avers that conducting insurance business without a valid insurance producer license results in actions that are deceptive and misleading to consumers in this State, in violation of Ark. Code Ann. § 23-65-101(a)(2)(A) and § 23-66-205.

10. Prior to the discovery that Respondent was conducting insurance business without a valid insurance producer license, the Department was in the process of entering into a consent revocation of Respondent's insurance producer license based on an investigation of a previous complaint made by consumer Carlos Davis against the Respondent. Said complaint was received after the April 14, 2008 Consent Order referenced above was entered and while Respondent was on probation.

11. According to the complaint received by the Department, Respondent misrepresented the interest rate and surrender period of an Allianz Life Insurance

Company annuity policy during the sales presentation. It is alleged that Respondent told complainant Davis that the policy would earn 6.5% interest for 7 years; however, the policy actually earned 3.25%. Upon receipt of the annual statement from Allianz, Davis realized the difference in the interest rate and questioned Respondent. Respondent then provided Davis with a new annual statement which reflected the promised interest rate of 6.5%. Respondent provided complainant with a second statement one month later, which also reflected 6.5% interest earned. Later, Davis called the home office for Allianz in order to change his address and asked for his account value. At that time, he learned that the value of his policy was much less than what the statements provided by Respondent indicated and that the surrender period was actually fourteen (14) years, not seven (7) as Respondent had indicated. Davis asked Respondent about the discrepancies and Respondent advised that he had been misinformed as to the interest rates, thus the policy had been misrepresented. Respondent wrote a letter to Allianz requesting that the premium be refunded to Davis.

12. In response to this complaint, Respondent alleges that his Manager at GamePlan Financial Marketing ("GamePlan") misinformed him as to the rates of the policy and that his Manager also provided Respondent with the account statements to provide to Davis. However, Respondent's manager denies those allegations and indicated that Respondent sold several of these policies prior to the sale to Davis, and after checking with the consumers who previously purchased those policies, found that those consumers understood their policies and the correct interest rates, which indicated that Respondent knew or should have known the correct interest rates and surrender periods for this policy when presenting it to the complainant.

13. When asked, Respondent could not remember in what form (facsimile, email, regular mail, etc.) he received the statements from his manager. GamePlan conducted a search of all emails sent to Respondent for this time period, and there were no emails to Respondent with regard to this matter for this time period. Further, GamePlan confirmed that they do not have authority to generate any Allianz account statements for policyholders thus, would not have generated this document.

14. The complainant was refunded all premiums, plus interest for the policy as a result of the alleged misrepresentation by Respondent.

15. The Department avers that the actions of Respondent, as described in the preceding paragraphs, are in violation of the Insurance Code for: Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance, in violation of Ark. Code Ann. § 23-64-512(a)(5); Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation or financial irresponsibility, in violation of Ark. Code Ann. § 23-64-512(a)(8); Misrepresenting the benefits, advantages, conditions, or terms of any insurance policy is an unfair method of competition and unfair or deceptive act or practice in the business of insurance, in violation of Ark. Code Ann. § 23-64-512(a)(8)(a); Churning of business by replacing an existing policy that is not for the benefit and betterment of the insured, in violation of Ark. Code Ann. § 23-66-206(2); Making false or fraudulent statements or representations in, or relative to, an insurance policy, in violation of Ark. Code Ann. § 23-66-206(8); Making false or fraudulent statements or representations in, or relative to, an application for insurance, in violation of Ark. Code Ann. § 23-66-305; Failing to provide reasonable and professional service to each insured or prospective insured, in violation of Ark. Code Ann. § 23-66-307(a)(1); Failing to exercise discretion and

good faith in the insurance sales presentation of transaction, in violation of Ark. Code § 23-66-307(a)(2); and Failing to improve upon existing insurance by provide better coverage or a more suitable product for the needs of the insured, their family, or business, in violation of Ark. Code Ann. § 23-66-307(a)(3).

CONCLUSIONS OF LAW

1. That the Commissioner has jurisdiction over the parties and over the subject matter herein pursuant to Ark. Code Ann. § 23-61-103.

2. That pursuant to Ark. Code Ann. § 23-64-512(a) and § 23-64-216(d)(1), if the Commissioner finds that one or more grounds exist for the suspension or revocation of any license under § 23-64-216(a)(1), the Commissioner in his or her discretion may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000) per violation or up to five thousand dollars (\$5,000) per violation if willful misconduct on the part of the licensee is found.

3. That Respondent has been made fully aware of his right to a hearing and has voluntarily and intelligently waived said right and consents to the entry of this Consent Order.

\THEREFORE, in consideration of these Findings of Fact and Conclusions of Law, it is hereby ordered and agreed that:

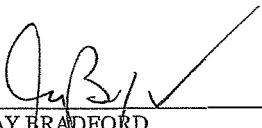
A. Respondent's resident Arkansas insurance producer's license(s) is hereby voluntarily surrendered and will be treated as a license revocation by the Arkansas Insurance Commissioner.

B. Pursuant to Ark. Code Ann. § 23-64-216, Respondent shall also pay an administrative penalty of \$25,000. The administrative penalty shall be paid according to the payment schedule as established by a separate letter agreement.

C Pursuant to Ark. Code Ann. § 23-64-218(a)(1), Respondent shall immediately forward to the Insurance Commissioner all insurance producer licenses.

D. The Commissioner will not consider re-licensure until the expiration of three (3) years from the date of this Order and thereafter not until Respondent has paid all administrative penalties or restitution in accordance with the provisions under Ark. Code Ann. § 23-64-217(b).

IT IS SO ORDERED THIS 17th day of -1/2, 2009.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS



Andrew Paul Gambel

Kaycee Wolf

From: Nick Perry <nperry@voyager-financial.com>
Sent: Friday, April 01, 2011 4:44 PM
To: Jonathan Sheets
Subject: Re: websites

We currently have the following domains under management:

AnnuitySeller.com
BuyYourPension.com
BuyYourPension.info
CertifiedPreOwnedAnnuities.com
CertifiedPreOwnedIncome.com
LumpSumSettlementStore.com
MyPensionFunding.com
MyPensionFunding.info
Pension4Cash.com
Pension4Cash.info
PensionStream.com
Voyager-Financial.com
VoyagerFinancialGroup.com

Nick L. Perry
National Marketing Director
Voyager Financial Group

Toll Free: 866.417.9580 x204
Direct: 404.660 .1020
Fax: 888.308.6989

Atlanta Satellite Office
433 Highland Avenue NE #1346
Atlanta, GA 30312
www.Voyager-Financial.com



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On Apr 1, 2011, at 5:33 PM, Jonathan Sheets wrote:

Nick,

I need to file DBAs for all of the websites VFG does business as. Could you please provide me with a list of those sites?

<image001.jpg>

Notice: This electronic message and any attachment(s) contain confidential information that may be legally privileged. If you are not the intended recipient, you must not review, retransmit, convert to hard copy, copy, use or disseminate this message or any attachment(s) to it. If you have received this message in error, please immediately notify us by return email or by telephone at 870-972-0145 and delete this message. Please note that if this message contains any forwarded message or is a reply to a prior message, some or all of the contents of this message or any attachment(s) may not have been produced by Jonathan Sheets. This notice is automatically appended to each message leaving Jonathan Sheets. Thank you.

November 29, 2012



To:

Arkansas Securities Department
 Heritage West Building, Suite 300
 201 East Markham Street
 Little Rock, AR 72201-1692
 Attn: Kaycee Wolf - Staff Attorney

Arkansas Attorney General's Office
 323 Center Street, Suite 200
 Little Rock, AR 72201

Re: Voyager Financial Group

I am writing regarding a transaction involving Voyager Financial Group (VFG). I filed a complaint with the Better Business Bureau against VFG and the BBB suggested I advise you of the issue, as well.

In July, 2011, I entered into a contract to purchase a cash flow from a man named [REDACTED] who resided in New York. I do not know where he currently resides. The contract was handled by VFG. The terms of the contract were for the seller to redirect monthly payments from NY State Pension (monthly payments which I understand he inherited and was looking to sell for a lump sum payment) to an escrow account managed by First Reliant Group. Mr. [REDACTED] gave First Reliant Group "special power of attorney" to "Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft that is directed by me into its possession for the purpose of fulfilling my obligation under the execution of the Contract for Sale of Cash Flow". The special power of attorney is effective from July 23, 2011 until July 23, 2017 (30 days after date of the last assigned disbursement).

I invested \$38,511.54 and was to receive 72 monthly payments of \$670 beginning in July 2011. I do not know the amount of the lump sum payment Mr. [REDACTED] received as this was all handled by VFG and First Reliant Group. I never had any contact with Mr. [REDACTED] nor did I actually have any contact with anyone at VFG. All correspondence regarding this transaction was done via email with Chad Hill, an employee of Investing Forward.

Payments to me began on August 17, 2011 (both the July and August payments were made at the same time) and I continued to receive the monthly payments as expected. The monthly payments were electronically deposited into my account and the payments received through March, 2012, show the ACH deposit came from "First Reliant Gr". The ACH deposit made on 4/6/2012 was from "Voyager Financia". In early May, 2012, I received a letter from VFG dated May 4, 2012, advising me that VFG had not received the May payment from the seller. The May 4th letter stated that VFG was already working to identify the issue for resolution. In addition, VFG offered to make the May payments while they worked to identify and resolve the issue as to why the Seller's payment had not been received. I responded to this letter by sending an email to VFG employee Victoria Jones and thus began email correspondence in which Victoria wrote on May 9, 2012 "the issue was the bank account the payment is currently going to has been closed." She also wrote "We have been trying to contact the seller to have him update the banking information with the pension company" and "VFG is going to cover the payment while we work to get the seller to have his payments set up correctly. In the meantime, the May payment will be sent out to you today." Emails with Victoria continued that day and, on May 21, 2012, I finally spoke with then general counsel, Jonathan Sheets. Mr. Sheets followed up our conversation with an email dated May 22, 2012, in which he wrote that VFG would make the payments in the amount that I expected for not more than 6 months while aggressively attempting to find the seller. In addition, he wrote "if VFG is unable to locate your Seller at the end of the 6 months, or at any point during the 6 months, VFG will purchase your case from you in a promissory note at your original purchase price, minus what you have received, at the interest rate you originally negotiated for in your contract for purchase." His email goes on to say "I do hope these terms are acceptable to you and upon receiving your approval, I will have my staff send you the payment and begin the 6 months period." He also wrote "We do intend to make this right". I replied to Mr. Sheets' email that same day and also stated that I was willing consider VFG purchasing the case from me **at any time**. VFG's next payment was deposited into my account on May 29, 2012 and payments from VFG continued with the last payment received on October 11, 2012. Between May 22, 2012 and September, I had no further communication with VFG.

I received a letter from current general counsel, Andrew Caldwell, dated September 13, 2012 in which he wrote that VFG was rescinding their offer to purchase the contract from me. His letter did not give a reason for rescinding the offer. I emailed Mr. Caldwell on September 19 and thus began an lengthy email exchange in which Mr. Caldwell stated that VFG has no responsibility for anything regarding this contract. I explained to him everything that I have written to you above, to no avail. At one point, Mr. Caldwell wrote that the seller **refused** to redirect the payments to the new escrow account

so I asked for documentation of that refusal. When I pressed him for such documentation, he then stated he didn't have any. VFG's offer to purchase the contract from me was based on their ability to locate the seller and VFG did not provide any proof of locating the seller. In fact, on September 24, 2012, VFG employee Victoria Jones sent an email to Chad Hill, Investing Forward, in which she states "I've never been able to contact the seller". This is the same thing she wrote to me back on May 9. VFG couldn't locate the seller back in May, per Victoria's emailed statement and, again, she emailed on September 24 that she still had never been able to contact the seller. Therefore, the terms of VFG's offer to purchase the contract from me if they could not locate the seller have been met and my expectation is for VFG purchase the contract from me as Jonathan Sheets wrote in his email dated May 22, 2012. However, Mr. Caldwell has refused to honor Mr. Sheets' commitment and goes from saying VFG has no responsibility to saying I never accepted the offer. If VFG didn't have any responsibility, why did then general counsel Jonathan Sheets assume responsibility, make the payments and write to me that they intended to "make this right"? If I didn't accept their offer, as Mr. Caldwell states, why did VFG start making the monthly payments to on May 29, 2012, seven days after I responded to Mr. Sheets' email accepting the terms of his offer.

In summary, I am asking that your offices look into the practices of Voyager Financial Group and First Reliant Group. I am certainly not a lawyer and have no legal training whatsoever but it concerns me that VFG is not honoring the commitment made to me by former general counsel Jonathan Sheets. It concerns me that current general counsel Andrew Caldwell has made emailed statements to me that "the seller refused to redirect the payments" and "VFG located the seller" when, in fact, he cannot provide any proof of contacting the seller and an employee of VFG has emailed that she has never been able to contact the seller. VFG did not notify me that there was an issue with First Reliant Group's bank account which it appears they knew about as far back as November 2011 when they supposedly sent a letter to the seller regarding the bank changes. If VFG was not part of this contract, as Mr. Caldwell has stated, then why did VFG assume responsibility for making payments and for locating the seller? Had First Reliant Group's bank account not been shut down, would I still be receiving payments from the seller? We'll never know the answer to that question. However, the timing of the payments stopping when First Reliant Group's bank account was closed down makes it appears to me that the seller never received notification to direct the payments to another escrow account. Did VFG send any of their correspondence to the seller via certified mail, return receipt, to prove the seller received it? If so, they either received a confirmation that the seller received the notification or the notification was returned to VFG as undeliverable. VFG has not provided anything to prove notification, either way. If VFG has proof of notification to the seller, why would they not provide it to me to show they did their part to notify the seller? I feel that VFG is to "bully" me and get out of honoring their commitment to purchase the contract from me per the terms stated in Jonathan Sheets email dated May 22, 2012. I am included copies of the email correspondence beginning on May 9, 2012 with Victoria Jones and ending with my email to Jonathan Sheets on May 22, 2012. I am also including a copy of VFG's response to the BBB and my response to that response with my comments added to it. Again, I am asking for your offices to look into their practices. If nothing else comes of this, I don't want anyone else to sustain a loss like I have. I am a widow and this loss and the fight I am having to go through with VFG is affecting me both financially and physically.

Sincerely,

[REDACTED]
[REDACTED] TX [REDACTED]
713 [REDACTED] cell phone
[REDACTED]@hotmail.com

To: Kaycee Wolf, Staff Attorney
Arkansas Securities Department
Heritage Bldg West, Ste 300
201 E. Markam St.
Little Rock, AR 72201

RECEIVED
12 SEP 17 AM 8:11
ARKANSAS SECURITIES DEPT.

Dear Kaycee Wolf,

I have been defrauded out of a sizable amount of money as a result of investing in two 'Structured Cash Flow' contracts offered by Voyager Financial Group, LLC (1431 Merrill Dr. Ste. H, Little Rock, AR 72211). Specifically, Voyager Financial Group set up and turned profits from inherently flawed contracts and failed to warn me as the buyer of the financial risk into which I was entering. I am seeking to recover the funds I invested with this company and to have the owners of Voyager Financial Group held accountable for their fraudulent business practices.

Warren Thompson of Annuity Pros, Inc. (362 Gulf Breeze Pkwy, Ste. 380, Gulf Breeze, FL 32561), a sales agent, recommended these contracts to me and, as I had had good success with several other financial vehicles that he offered previously, I invested my money with confidence that I would receive the promised return.

In June, 2011, I purchased from Voyager Financial Group contract VFG0318S for the amount of \$100,656.23. In return I was to receive 180 monthly payments of \$1,000 beginning July 15, 2011 and ending June 15, 2026. These payments were to come out of an escrow account to which a certain [REDACTED] had assigned his U.S. Army pension payments for the fifteen year period of the contract. It was my understanding that Mr. [REDACTED] assignment of the pension payments to the escrow account was irrevocable and I would never have entered into this contract if I had thought otherwise.

In August, 2011, I purchased another Voyager Financial Group contract, VFG0656S, for the amount of \$81,758.43. In return I was to receive 120 monthly payments of \$1,000 beginning October 10, 2011, and ending September 10, 2021. The terms and conditions of this contract were similar to the contract described above. Mr. [REDACTED] was to assign his U.S. Marine pension payments to an escrow account for the ten year period of the contract. Again, it was my understanding that this assignment was irrevocable.

Monthly payments to me proceeded as scheduled, first from VFG0318S and next also from VFG0656S, until I received a letter from Jonathan Sheets, General Counsel at Voyager Financial Group, dated December 6th, 2011, informing me of a "breach of the contract by the Seller" of VFG0656S. Voyager Financial Group offered to attempt "to bring the Seller back into compliance" and to make me a one time \$1,000 payment, but refused to accept any further obligations. I have received no more scheduled payments



from contract VFG0656S except for the one time \$1,000 payment offered by Voyager Financial Group.

Scheduled payments from contract VFG0318S continued to be made until I received another letter from Mr. Sheets dated June 6, 2012, stating there was "a payment variance" regarding this contract. He offered the same terms as in his previous letter and there have been the same results. I have received no more scheduled payments from contract VFG0318S except for the one time VFG payment of \$1,000.

In all I invested \$182,414.66 in these two Voyager Financial Group contracts and thus far have received payments totaling \$16,000. I am 63 years of age and the funds I invested in these two VFG contracts represent a substantial percentage of the savings I was able to build over a lifetime of hard work. The suspension of the promised payments from these VFG contracts has devastated my finances. I do not believe that in the United States of America a company such as Voyager Financial Group can be allowed, without warning of the risk, to set up such flawed contracts whereby the seller of a cash flow can simply turn around and cut off the income stream.

All the statements I have made herein are true and I will remain available to testify in court under penalty of perjury if that should become necessary.

Sincerely,

[REDACTED] 9-17-12
[REDACTED]
[REDACTED] Avenue
[REDACTED] CA [REDACTED]
(650 [REDACTED])

September 8, 2012

Subject: VFG product purchases and non-disclosure

I am looking for a resolution to my purchases of two products, and I use that term loosely, that were sold to me by Warren Thompson of Annuity Pro's. My prior business dealings with Warren were the purchase of structured settlement annuities which are a safe vehicle and were selected as they met my objective to preserve principle while yielding a reasonable return over time. Warren was very aware of my investment objective which was and is safety. Unfortunately because there was no disclosure that defined the product risks particularly regarding the term and unbelievable process called redirection of payment.

Due to this nondisclosure VFG basically stole my money, took their cut, paid other commissions, and gave the rest to the pensioner and expected that very high credit risk person to pay me my monthly check. The insanity of even selling this product is unimaginable to me, but not disclosing the product risk is criminal from an ethics prospective and most likely from a legal prospective as well.

I have tried to get this issue resolved with VFG employees Victoria Jones, Jonathan Sheetz, and their new General Council to no avail. VFG needs to make me whole without further delay and repurchase both of the miss-represented products VFG04065 and VFG246S for the outstanding principle balance.

At this time I have not hired legal council and want nothing from anyone involved except my hard earned money.

Mr. Thompson has shared information regarding the work you are doing to help the investors swindled by VFG. Please add me to list of those who are looking for help resolving these purchases.

Sincerely,

[REDACTED]
[REDACTED]
[REDACTED] Maine [REDACTED]





VOYAGER FINANCIAL GROUP
VFG, LLC, A DELAWARE LIMITED LIABILITY COMPANY

January 10, 2012

[REDACTED]
 [REDACTED]
 [REDACTED] TX [REDACTED]

Dear Mrs. and Mr. [REDACTED]

This letter is to inform you that VFG, LLC has been made aware of a payment variance from the scheduled payments in your case, VFG0365S. VFG worked to facilitate the purchase of this income stream and monitors the investments to assist if ever needed or desired by you.

VFG is of the understanding that your contract servicer has not received the Seller's payment this month. In most instances this is due to a system or human error. It is typical that your Seller has not intentionally breached the contract and is experiencing a technical difficulty in receiving the payments from the pension company at the escrow company.

With that in mind, VFG would like to offer its services in identifying the issue and working to resolve this. Our immediate goal is to make your income stream current and compliant with your contract. As part of this service, VFG is willing to provide a payment to you, equal to one (1) month's payment under your contract, while we attempt to contact the Seller and help them cure this potential breach of their contractual obligations. This payment is provided directly from VFG as a service to assist you in reaching a solution to this potential contractual problem and should not be considered an assumption of any of the Seller's obligations under your contract. This payment, should you choose to accept it, is made with the understanding that, upon the current circumstances being resolved and brought back into compliance with the missing payment is received by you, this payment shall be repaid to VFG. VFG will work to resolve this quickly and will keep you informed of the issue and our progress. If the issue is not resolved by the next payment's due date, VFG will inform you of this and apprise you of additional options and recourse available to you at that time.

The VFG offer of action here is merely to prevent unnecessary costs or legal expenses to correct what may be a human or system error. Given this, VFG makes no representations and encourages you to consult independent counsel with respect to all matters related to contractual enforcement.

If VFG's services are not agreeable to you, no action in relation to this letter is required and you are, of course, free to pursue remedies under your contract in this matter as you or independent counsel see fit at any time. Should you choose to pursue recourse against the Seller, you may contact VFG for any information we may be able to provide to assist you.

If you desire for VFG to take these aforementioned actions, please contact:

1431 Merrill Dr. Ste. H ☛ Little Rock, AR 72211 ☛ Phone: 1-888-551-2992 (Toll-Free) ☛ Fax: 1-888-308-



Victoria Jones
8201 Cantrell Rd. Suite 350
Little Rock, AR 72227

Email: vjones@voyager-financial.com
Phone: 888.551.2992 x 106
Fax: 888.308.6989

Once you have notified of your decision, in writing, we will be able to begin working to correct this variance. Please respond within three business days of your receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Sheets', with a stylized flourish at the end.

Jonathan Sheets
General Counsel

*Sent to Sheets certified mail
2-7-12.*

Copy sent to Warren Thompson

Feb. 7, 2012

Mr. Jonathan Sheets
General Counsel
Voyager Financial Group
1431 Merrill Dr., Ste. H
Little Rock, AR 72211

Dear Mr. Sheets:

Regarding my contract for a structured settlement (VFG0365S), I was somewhat relieved today to find \$1000 deposited into the bank account that my wife and I designated. Yet my relief is tempered by my recently acquired understanding that the "irrevocable" income stream that we purchased from [REDACTED] can evidently be interrupted at will by Mr. [REDACTED].

As your field agent Warren Thompson told me on Jan. 20 of this year, "I would never have recommended this investment if I thought that the seller had control over the distribution." And as your company's Victoria Jones told me on Jan. 17, "VFG understood that payment from the Teamster's Pension Fund to Security Title [the escrow agent] was automatic."

I purchased this income stream in good faith with the understanding that the flow into my account was, to repeat Ms. Jones' term, automatic. Therefore, I wish to continue to receive the income stream provided that Mr. [REDACTED] be relieved of any opportunity to redistribute any of the remaining \$65,000 that he agreed to provide over the next 65 months. I would like to have you confirm that steps have been taken to insure that this interruption will not happen again, and that I receive the \$1000 that was wrongly withheld from us last month.

If that cannot be arranged, I wish to receive a refund for the remaining amount of our purchase price.

Truly yours,

[REDACTED]

[REDACTED]

[REDACTED] TX [REDACTED]

[REDACTED]@sbcglobal.net

[REDACTED] Dr.

[REDACTED] GA [REDACTED]

January 30, 2012

Mr. Jonathan Sheets
8201 Cantrell Rd.
Ste. 370
Little Rock, AR 72227

Dear Mr. Sheets:

In a letter from you dated December 6, 2011, I was informed that the seller in my case VFG0191 may be in breach of contract. You stated with my approval you would attempt to solve the problem and that I would be informed by the due date of the next payment if you were able to bring the seller back into compliance. The January 15, 2012 payment has not been posted to my [REDACTED] Account.

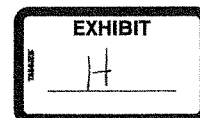
In light of not having the redirect risk factors disclosure to me, I am requesting a full refund of my investment plus interest.

An immediate reply would be appreciated.

Best Regards,

[REDACTED]

CC: Mr. Brandon Kogut, President, Voyager Financial
Mr. Drew Gablar, Operating Owner-Voyager Financial
Mr. Warren R. Thompson, President, Annuity Pros, Inc



Insignias and a waving flag give this Web page for Veterans First Financial Services a military look, and the language hints at financial empowerment. But VFFS wants veterans to sell their streams of cash benefits for a lump sum, a type of deal that NCLC attorneys believe is illegal under federal law.

National Consumer Law Center

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M. Steve Yoakum
Executive Director
Ext. 1099

Deirdre Snider
Assistant Executive
Director, Operations
Ext. 1041

Alan Thompson
General Counsel
Ext. 1097

Nicole Hamler
Director of
Administrative
Planning and Design
Ext. 1095

VIA U.S. MAIL
and
EMAIL (mark.baker@sos.mo.gov)

October 23, 2013

Mark Baker
State Information Center
600 W. Main St.
Jefferson City, Missouri 65101

Re: Sale of Pension Benefits
File No. I2013-65

Dear Mr. Baker:

This letter is in response to your letter to Steve Yoakum dated October 7, 2013 (enclosed). Our responses to the questions enumerated in your letter are set forth below. I retained the original numbering of the questions included in your letter.

4. May a participant in your pension plan ("Pensioner") enter into an arrangement to sell an income stream from all or part of their pension to a third party?²

The Public School Retirement System of Missouri ("PSRS") is governed by Sections 169.010 et seq. and The Public Education Employee Retirement System of Missouri ("PEERS") is governed by Sections 169.600 et seq. Both PSRS and PEERS are subject to "anti-alienation" provisions in Section 169.090 and Section 169.690, respectively. Those provisions prevent PSRS and PEERS from paying benefit payments to anyone other than the retiree and prevent PSRS and PEERS from accepting an "assignment" of the retiree's benefit payments. Therefore, PSRS and PEERS are prohibited from paying benefit payments directly to a pension advance entity or an "escrow fund" as described in the example in your letter.

However, after receipt of the benefit payment from PSRS or PEERS, the retiree is free to use his or her pension benefit payments in any manner. Therefore, a PSRS or PEERS retiree is free to enter into a contract with a pension advance service as long as that contract does not require PSRS or PEERS to make a payment to anyone other than the retiree.

5. Are you aware of any Pensioner who has sold an income stream from all or part of their pension? If so:
- c. provide the name and contact information for each Pensioner; and
 - d. the name and contact information for any company that provided Pension Advance Services to the Pensioner.

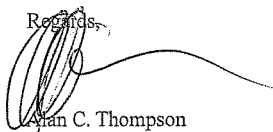
Neither PSRS nor PEERS is aware of any retiree who has sold an income stream from all or part of his or her pension. Neither PSRS nor PEERS has received a request from a retiree to make a payment to a pension advance service or into an "escrow" account as described in your letter.

6. Have you provided any information to Pensioners relating to these Pension Advance Services? If so, provide a copy of this information.

I have enclosed information that PSRS and PEERS have provided to their members.

Please feel free to call me at (573) 638-1097 if you have any questions.

Regards,



Alan C. Thompson
General Counsel

Enclosures



JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

JASON KANDER
SECRETARY OF STATE
STATE OF MISSOURI

SECURITIES
(573) 751-4136

October 7, 2013

Steve Yoakum
Public School & Education Employee Retirement Systems of Missouri
3210 West Truman Blvd.
Jefferson City, MO 65109

RE: Sale of Pension Benefits
File No.: I2013-65

ATTENTION: WRITTEN RESPONSE DUE ON OR BEFORE October 24, 2013

Dear Mr. Yoakum:

The Missouri Securities Division (the "Division") is investigating firms and individual who provide pension advance services to pension recipients and/or facilitate, market, structure leverage, and/or factor income streams for sale to investors ("Pension Advance Services"). The Division is concerned that in many instances, the pensioner receives a lump-sum amount significantly less than the value of the future income payments while incurring fees and cost associated with these transactions.

Request for a Written Response

The Missouri Commissioner of Securities (the "Commissioner"), through the Enforcement Section of the Securities Division ("Enforcement Section"), and pursuant to Section 409.6-602(b), RSMo. (Cum. Supp. 2012), may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Commissioner considers relevant or material to the investigation. Under this authority, the Enforcement Section requests that you provide the following information:

JAMES C. KIRKPATRICK STATE INFORMATION CENTER
600 W. MAIN STREET • JEFFERSON CITY 65101

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4. May a participant in your pension plan ("Pensioner") enter into an arrangement to sell an income stream from all or part of their pension to a third party?²
5. Are you aware of any Pensioner who has sold an income stream from all or part of their pension? If so:
 - c. provide the name and contact information for each Pensioner; and
 - d. the name and contact information for any company that provided Pension Advance Services to the Pensioner.
6. Have you provided any information to Pensioners relating to these Pension Advance Services? If so, provide a copy of this information.

Impeding this Investigation

You are hereby notified that it is a felony for any person in an investigation or other proceeding under Missouri securities laws to alter, destroy, mutilate, conceal, make a false entry in, or by any means falsify, remove from any place or withhold any record, document, or tangible, electronic or physical evidence with the intent to impede, obstruct, avoid, evade or influence the official investigation or administration of any proceeding authorized under Chapter 409. See Section 409.108, RSMo. (Cum. Supp. 2012).

Sincerely,

**THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION**


 Mark Baker, Investigator
 Telephone: (573) 751-4704
 Fax: (573) 526-3124
 Email: mar.baker@sos.mo.gov

² To better help you understand our request, such an arrangement may be set up as follows: the pensioner agrees to sell an income stream from all or part of the pension for a designated period of time in exchange for an upfront lump-sum payment from a third party (provider of pension advance services). Under the arrangement, the pensioner diverts the pension benefits immediately after the benefits are received to an escrow fund. From the escrow fund, the money is then directed to the third party. The third party does not become the designated beneficiary of the pension plan, and the rights and title to the pension benefits remain with the pensioner. To ensure the third party's receipt of the future income stream, the pensioner is required to have a collaterally assigned life insurance policy that designates the third party as the beneficiary.



➤ **What are Pension Advances?**

Pension advances loans against defined benefit pensions, such as military or public sector (government) pensions. These loans offer retirees a chance to “convert tomorrow’s pension checks into today’s hard cash.” However, many of the true costs of these advances are hidden from borrowers, such as the true interest rates, which typically range from 27% to 106%. This information is not disclosed in the advertisements or in the loan contracts themselves. Like any other high-interest predatory loan, pension advances can lead to a cycle of indebtedness that is impossible to escape. Other types of predatory loans include title loans, payday loans and certain types of credit cards.

According to *The New York Times*, the companies offering these loans are getting their payments in a variety of ways. One is by encouraging the retiree to set up a separate bank account, controlled by the company, into which the retiree’s pension payments are deposited. Another condition of this type of predatory loan may be to require borrowers to take out a life insurance policy naming the lender as the sole beneficiary.

➤ **Are PSRS/PEERS retirees vulnerable?**

Unfortunately, PSRS/PEERS retirees are not immune from being targeted by companies who deal in predatory loans and pension advances. As a retiree, you can get a loan based solely on your retirement benefit without PSRS/PEERS being made aware of the transaction.

➤ **How are PSRS/PEERS retirees protected?**

Retirees are protected by Missouri law which prohibits the assignment of a retirement benefit to someone other than yourself, including people or companies.

In addition, PSRS/PEERS retirement benefits may be protected from creditors in a bankruptcy proceeding. PSRS and PEERS are “tax-qualified” public pension plans under the Internal Revenue Code. That means, PSRS/PEERS benefits may be exempt from creditor attachment under the United States Bankruptcy Code. However, you should consult with a bankruptcy attorney if you are considering filing for bankruptcy protection. Filing for bankruptcy may not relieve you from existing obligations to creditors.


Another way to protect our retirees is through education. PSRS/PEERS has put an article on our website and may also put something in the next retiree newsletter warning our membership of the scam of pension advances. We also plan to verbally warn our retirees when we speak to the different groups throughout Missouri.

➤ **What do we tell a retiree that is currently in a pension advance loan arrangement?**

It is recommended they contact a lawyer or the Missouri Attorney General’s office for help and to file a complaint with the Consumer Finance Protection Bureau. Treasurer Zweifel is asking Missourians to let him know if they have been approached by businesses promoting this type of offer. To do this, they go to treasurer.mo.gov and click on the Pension Advance Portal.

- Missouri Attorney General’s office
573-751-3321 or attorney.general@ago.mo.gov
- Consumer Finance Protection Bureau
855-411-CFPB (2372) or <http://www.consumerfinance.gov/contact-us/>

Retirees Beware: Pension Advance Fraud - PSRS/PEERS



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News

Retirees Beware: Pension Advance Fraud

9-19-2013

A relatively new phenomenon is taking place, not only in Missouri but across the country, known as pension advances. Tuesday, State Treasurer Clint Zweifel issued a warning to Missourians about this practice. The Public School and Education Employee Retirement Systems of Missouri (PSRS/PEERS) want to make sure you are aware of the scam. Below is a short Q&A to help inform you on the topic.

Question: What are Pension Advances?

Answer: In essence, pension advances are loans against defined benefit pensions, such as military or public sector (government) pensions. These loans offer retirees a chance to "convert tomorrow's pension checks into today's hard cash." However, many of the true costs of these advances are hidden from borrowers, such as the true interest rates, which typically range from 27% to 106%. This information is not disclosed in the advertisements or in the loan contracts themselves. Like any other high-interest predatory loan, pension advances can lead to a cycle of indebtedness that is impossible to escape. Other types of predatory loans include title loans, payday loans and certain types of credit cards.

According to The New York Times, the companies offering these loans are getting their payments in a variety of ways. One is by encouraging the retiree to set up a separate bank account, controlled by the company, into which the retiree's pension payments are deposited. Another condition of this type of predatory loan may be to require borrowers to take out a life insurance policy naming the lender as the sole beneficiary,

(A link to the full story issued April 27, 2013 in The New York Times can be found here: http://www.nytimes.com/2013/04/28/business/economy/pension-loans-drive-retirees-into-more-debt.html?pagewanted=all&_r=0)

Question: As a PSRS/PEERS retiree, am I vulnerable?

Answer: Unfortunately, you are not immune from being targeted by companies who deal in predatory loans and pension advances. As a retiree, you can get a loan based solely on your retirement benefit without PSRS/PEERS being made aware of the transaction. It is critical that you understand the terms of any loan you take out.

Question: As a PSRS/PEERS retiree, how am I protected?

Answer: First, you are protected by Missouri law which prohibits the assignment of a retirement benefit to someone other than yourself, including people or companies.

Throughout the last several years, various locations across the state. Check the schedule to see when we'll be in your area.

[PSRS Pre-Retirement Seminar Schedule](#)

[PEERS Pre-Retirement Seminar Schedule](#)

Retirees Beware: Pension Advance Fraud - PSRS/PEERS

In addition, PSRS/PEERS retirement benefits may be protected from creditors in a bankruptcy proceeding. PSRS and PEERS are "tax-qualified" public pension plans under the Internal Revenue Code. That means PSRS/PEERS benefits may be exempt from creditor attachment under the United States Bankruptcy Code. However, you should consult with a bankruptcy attorney if you are considering filing for bankruptcy protection. Filing for bankruptcy may not relieve you from existing obligations to creditors.

Question: What should I do if I am already in a pension advance loan arrangement?

Answer: Contact the Missouri Attorney General's office for help and to file a complaint with the Consumer Finance Protection Bureau. Treasurer Zweifel is asking Missourians to let him know if they have been approached by businesses promoting this type of offer. To do this, go to treasurer.mo.gov and click on the Pension Advance Portal.

Missouri Attorney General's office
(573) 751-3321 or attorney.general@ago.mo.gov

Consumer Finance Protection Bureau
(855) 411-CFPB (2372) or <http://www.consumerfinance.gov/contact-us/>

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Contact Information

By Phone:
(800) 392-6848
(573) 634-5290

Mailing Address:
P.O. Box 268
Jefferson City, MO 65102

By Email:
psrspeers@csrspeers.org

Physical Address: (McQ)
3210 West Truman Blvd.
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Pension Loans Drive Retirees Into More Debt - NYTimes.com

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Loans Borrowed Against Pensions Squeeze Retirees



Yana Chappell for The New York Times

Ronald E. Govan, a retired veteran in Shellville, Ga., filed a federal suit in February that raises concerns about the costs of a loan.

By JESSICA SILVER-GREENBERG
Published: April 27, 2013 | 409 Comments

To retirees, the offers can sound like the answer to every money worry: convert tomorrow's pension checks into today's hard cash.

A Vulnerable Age
Articles in this series are examining financial challenges and pitfalls faced by older Americans in lean economic times.

Breakdown of a Loan's Terms
Ronald E. Govan, a disabled military veteran, took out a loan from Pension, Annuities & Settlements in September 2012.

Upfront loan against his pension:	\$10,000
Monthly payment for a term of 60 months:	\$353
Total cost over the life of the loan:	\$21,380
Translates to an interest rate of:	36.4%

But these offers, known as pension advances, are having devastating financial consequences for a growing number of older Americans, threatening their retirement savings and plunging them further into debt. The advances, federal and state authorities say, are not advances at all, but carefully disguised loans that require borrowers to sign over all or part of their monthly pension checks. They carry interest rates that are often many times higher than those on credit cards.

In lean economic times, people with public pensions — military veterans, teachers, firefighters, police officers and others — are being courted particularly aggressively by

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pension-advance companies, which operate largely outside of state and federal banking regulations, but are now drawing scrutiny from Congress and the Consumer Financial Protection Bureau.

The pitches come mostly via the Web or ads in local circulars.

"Convert your pension into CASH," LumpSum Pension Advance, of Irvine, Calif., says on its Web site. "Banks are hiding," says Pension Funding L.L.C., of Huntington Beach, Calif., on its Web site, signaling the paucity of credit. "But you do have your pension benefits."

Another ad on that Web site is directed at military veterans: "You've put your life on the line for Americans to protect our way of life. You deserve to do something important for yourself."

A review by The New York Times of more than two dozen contracts for pension-based loans found that after factoring in various fees, the effective interest rates ranged from 27 percent to 106 percent — information not disclosed in the ads or in the contracts themselves. Furthermore, to qualify for one of the loans, borrowers are sometimes required to take out a life insurance policy that names the lender as the sole beneficiary.

LumpSum Pension Advance and Pension Funding did not return calls and e-mails for comment.

While it is difficult to say precisely how many financially struggling people have taken out pension loans, legal aid offices in Arizona, California, Florida and New York say they have recently encountered a surge in complaints from retirees who have run into trouble with the loans.

Ronald E. Govan, a Marine Corps veteran in Snellville, Ga., paid an interest rate of more than 36 percent on a pension-based loan. He said he was enraged that veterans were being targeted by the firm, Pensions, Annuities & Settlements, which did not return calls for comment.

"I served for this country," said Mr. Govan, a Vietnam veteran, "and this is what I get in return."

The allure of borrowing against pensions underscores an abrupt reversal in the financial fortunes of many retirees in recent years, as well as the efforts by a number of financial firms, including payday lenders and debt collectors, to market directly to them.

The pension-advance firms geared up before the financial crisis to woo a vast and wealthy generation of Americans heading for retirement. Before the housing bust and recession forced many people to defer retirement and to run up debt, lenders marketed the pension-based loan largely to military members as a risk-free option for older Americans looking to take a dream vacation or even buy a yacht. "Splurge," one advertisement in 2004 suggested.

Now, pension-advance firms are repositioning themselves to appeal to people in and out of the military who need cash to cover basic living expenses, according to interviews with borrowers, lawyers, regulators and advocates for the elderly.

"The cost of these pension transactions can be astronomically high," said Stuart Rossman, a lawyer with the National Consumer Law Center, an advocacy group that works on issues of economic justice for low-income people.

Pension Loans Drive Retirees Into More Debt - NYTimes.com

"But there is profit to be made on older Americans' financial pain."

The oldest members of the baby boom generation became eligible for Social Security during the recent housing bust and recession, and many nearing retirement age watched their investments plummet in value. Some are now sliding deep into debt to make ends meet.

The pitches for pension loans emphasize how difficult it can be for retirees with scant savings and checkered credit histories to borrow money, especially because banks typically do not count pension income when considering loan applications.

"The result often leaves retired pensioners viewed like other unqualified borrowers," one of the lenders, DFR Pension Funding, says on its Web site. That, the firm says, "can make the 'golden years' not so golden."

The combined debt of Americans from the ages of 65 to 74 is rising faster than that of any other age group, according to data from the Federal Reserve. For households led by people 65 and older, median debt levels have surged more than 50 percent, rising from \$12,000 in 2000 to \$26,000 in 2011, according to the latest data available from the Census Bureau.

While American adults of all ages ran up debt in good times, older Americans today are shouldering unusually heavy burdens. According to a 2012 study by Demos, a liberal-leaning public policy organization, households headed by people 50 and older have an average balance of more than \$8,000 on their credit cards.

Meanwhile, households headed by people age 75 and older devoted 7.1 percent of their total income to debt payments in 2010, up from 4.5 percent in 2007, according to the Employee Benefit Research Institute.

Financial products like pension advances, which promise quick cash, appear especially enticing because their long-term costs are largely hidden from the borrowers.

Federal and state regulators are spotting fresh examples of abuse, and both the Consumer Financial Protection Bureau and the Senate's Committee on Health, Education, Labor and Pensions are examining these loans, according to people with knowledge of the matter.

Though the firms are not directly regulated by states, officials from the California Department of Corporations, the state's top financial services regulator, filed a desist-and-refrain order against a pension-advance firm in 2011 for failing to disclose critical information to investors.

That firm has since filed for bankruptcy, but a department spokesman said it remained watchful of pension-advance products.

"As the state regulator charged with protecting investors, we are aware of this type of offer and are very concerned with the companies that abuse it to defraud people," said the spokesman, Mark Leyes.

Borrowing against pensions can help some retirees, elder-care lawyers say. But, like payday loans, which are commonly aimed at lower-income borrowers, pension loans can turn ruinous for people who are already financially vulnerable, because of the loans' high costs.

Some of the concern on abuse focuses on service members. Last year, more than 2.1 million military retirees received pensions, along with roughly 2.6 million federal employees, according to the Congressional Budget Office.

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Lawyers for service members argue that pension lending flouts federal laws that restrict how military pensions can be used.

Mr. Govan, the retired Marine, considered himself a credit "outcast" after his credit score was battered by a foreclosure in 2008 and a personal bankruptcy in 2010.

Unable to get a bank loan or credit card to supplement his pension income, Mr. Govan, now 59, applied for a payday loan online to pay for repairs to his truck.

Days later, he received a solicitation by e-mail from Pensions, Annuities & Settlements, based in Wilmington, Del.

Mr. Govan said the offer of quick, seemingly easy cash sounded too good to refuse. He said he agreed to sign over \$353 a month of his \$1,033 monthly disability pension for five years in exchange for \$10,000 in cash up front. Those terms, including fees and finance charges, work out to an effective annual interest rate of more than 36 percent. After Mr. Govan belatedly did the math, he was shocked.

"It's just wrong," said Mr. Govan, who filed a federal lawsuit in February that raises questions about the costs of the loan.

Pitches to military members must sidestep a federal law that prevents veterans from automatically turning over pension payments to third parties. Pension-advance firms encourage veterans to establish separate bank accounts controlled by the firms where pension payments are deposited first and then sent to the lenders. Lawyers for retirees have challenged the pension-advance firms in courts across the United States, claiming that they illegally seize military members' pensions and violate state limits on interest rates.

To circumvent state usury laws that cap loan rates, some pension advance firms insist their products are advances, not loans, according to the firms' Web sites and federal and state lawsuits. On its Web site, Pension Funding asks, "Is this a loan against my pension?" The answer, it says, is no. "It is an advance, not a loan," the site says.

The advance firms have evolved from a range of different lenders; some made loans against class-action settlements, while others were subprime lenders that made installment and other short-term loans.

The bankrupt firm in California, Structured Investments, has been dogged by legal challenges virtually from the start. The firm was founded in 1996 by Ronald P. Steinberg and Steven P. Covey, an Army veteran who had been convicted of felony bank fraud in 1994, according to court records.

To attract investors, the firm promised an 8 percent return and "an opportunity to own a cash stream of payments generated from U.S. military service persons," according to the California Department of Corporations. Mr. Covey, according to company registration records, is also associated with Pension Funding L.L.C. Neither Mr. Covey nor Mr. Steinberg returned calls for comment. In 2011, a California judge ordered Structured Investments to pay \$2.9 million to 61 veterans who had filed a class action.

But the veterans, among them Daryl Henry, retired Navy disbursing clerk, first class, in Laurel, Md., who received a \$42,431 pension loan at a rate of 26.8 percent, have not received any relief.

Robert Bramson, a lawyer who represented Mr. Henry in the class-action lawsuit, said that pensioners too often failed to contemplate the long-term costs of the advances.

"It's simply a terrible deal," he said.

FOR IMMEDIATE RELEASE

Tuesday, September 17, 2013

State Treasurer Clint Zweifel warns Missourians about pension advances and seeks legislative restrictions on practice

Treasurer Zweifel calls on public to share experiences with this practice in Missouri

JEFFERSON CITY - State Treasurer Clint Zweifel (ZWH-ful) today issued a warning to Missourians about an increasingly common practice called a pension advance, an agreement that promises fast access to cash but can ultimately cost retirees thousands in interest and fees. Treasurer Zweifel is asking the public to let him know if they have been approached by businesses promoting this offer and has asked Attorney General Chris Koster to join him in an investigation of the practice in Missouri.

"Missourians are known for being hard-working and our retirees deserve every protection they can get," Treasurer Zweifel said. "Unfortunately, there are businesses that prey on those retirees in difficult situations. Retirees are faced with medical bills, bills for aging parents and their own long-term care. Financial decisions can be difficult. Pension advance contracts are unregulated and often do not fully disclose the effective interest rate and other fees associated with them. These businesses are not held to the same standards as banks and life insurance companies. I want Missourians to be aware of this and to ask questions before making decisions that could impact them and their families for years to come."

Pension advances are a financial instrument where an individual with a pension receives an up-front, lump-sum payment in exchange for contracting away a portion of that individual's pension payment. Media reports indicate that monthly payments made by the borrower can be subject to effective interest rates of 27 to 106 percent.

Treasurer Zweifel is asking Missourians to let him know if they have been approached by businesses promoting this offer. To share your experience, go to his website treasurer.mo.gov and click on the Pension Advance Portal.

Treasurer Zweifel will be working with members of the General Assembly to propose legislation that will prohibit any company from offering this product in exchange for public pensions in the state of Missouri. This includes city, fire, police, state and teacher pensions. The federal government has already passed similar legislation prohibiting these agreements with regard to military pensions.

"Congress did the right thing when they protected veterans' pensions from this unscrupulous practice and we need to take it one step further here in Missouri," Treasurer Zweifel said. "Pension advances are wrong. We should and can prevent these businesses from operating in Missouri. We do not need bad actors preying on our retirees and their hard-earned retirement benefits."

This is an ongoing issue nationwide. In May, New York Governor Anthony Cuomo directed his Department of Financial Services to launch an investigation into pension advances. The United States Senate Health, Education, Labor and Pensions (HELP) Committee has created a bipartisan subcommittee to investigate this practice and pension sales.

A copy of the letter Treasurer Zweifel sent to Attorney General Koster is available [here](#).

"I appreciate Treasurer Zweifel bringing the issue of pension advances to our attention," Attorney General Koster said. "After years of public service, no one should be taken advantage of in their retirement years. I look forward to working with Treasurer Zweifel to protect Missouri consumers by investigating how pension advances are being conducted in our state."