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# PENSION ADVANCE TRANSACTIONS

## Questionable Business Practices and the Federal Response

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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

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

[2]Pension advance transactions have two major components: (1) pension advances—up-front lump-sum payments provided to consumers in exchange for a certain number (and dollar amount) of the consumers' future pension payments plus various fees and (2) pension investments—pension stream payments provided to investors in exchange for providing the lump sums. For 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

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

[4]Treasury's Internal Revenue Service (IRS) has an oversight role over private-sector pensions. IRS also has certain oversight roles over governmental plans other than antiassignment provisions. The term governmental plan includes any plan that is established and maintained by a state or local government for its employees as well as any 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 advances[6] 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

[5]Because 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.

[6]For 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.

[7]The 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

[8]We 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.

[9]GAO-14-420.

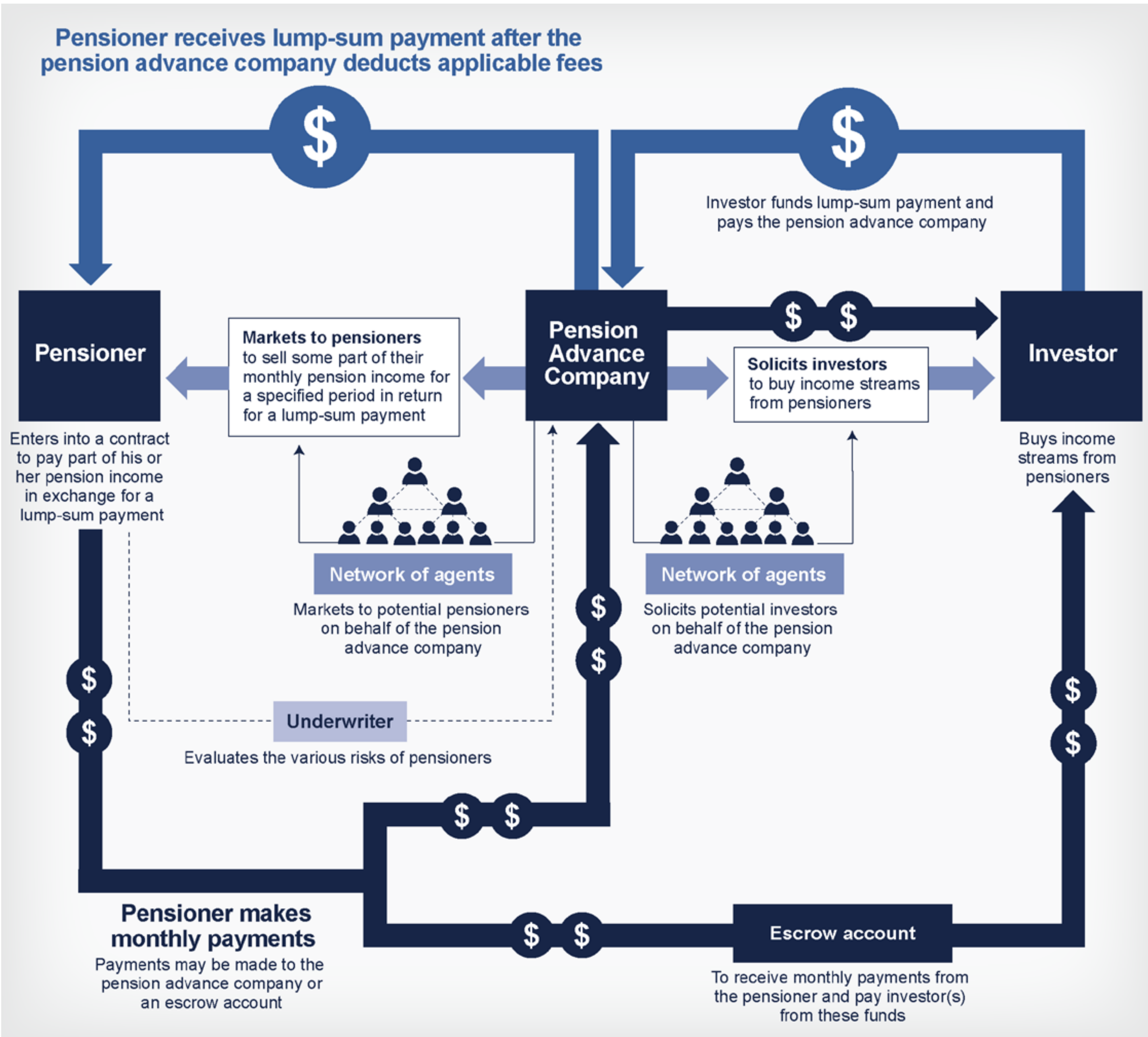
amount of the consumer's future pension payments plus various fees.[10] Pension investments, the related product, provide investors a future income stream when they make an up-front lump-sum investment in one or more pensioners' incomes.

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.

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

[11]A company may also require that the pensioner maintain a life-insurance policy to cover the outstanding balance in the event the pensioner dies before all payments are made. 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

## 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.

[12]Most 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.

[13]As 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]

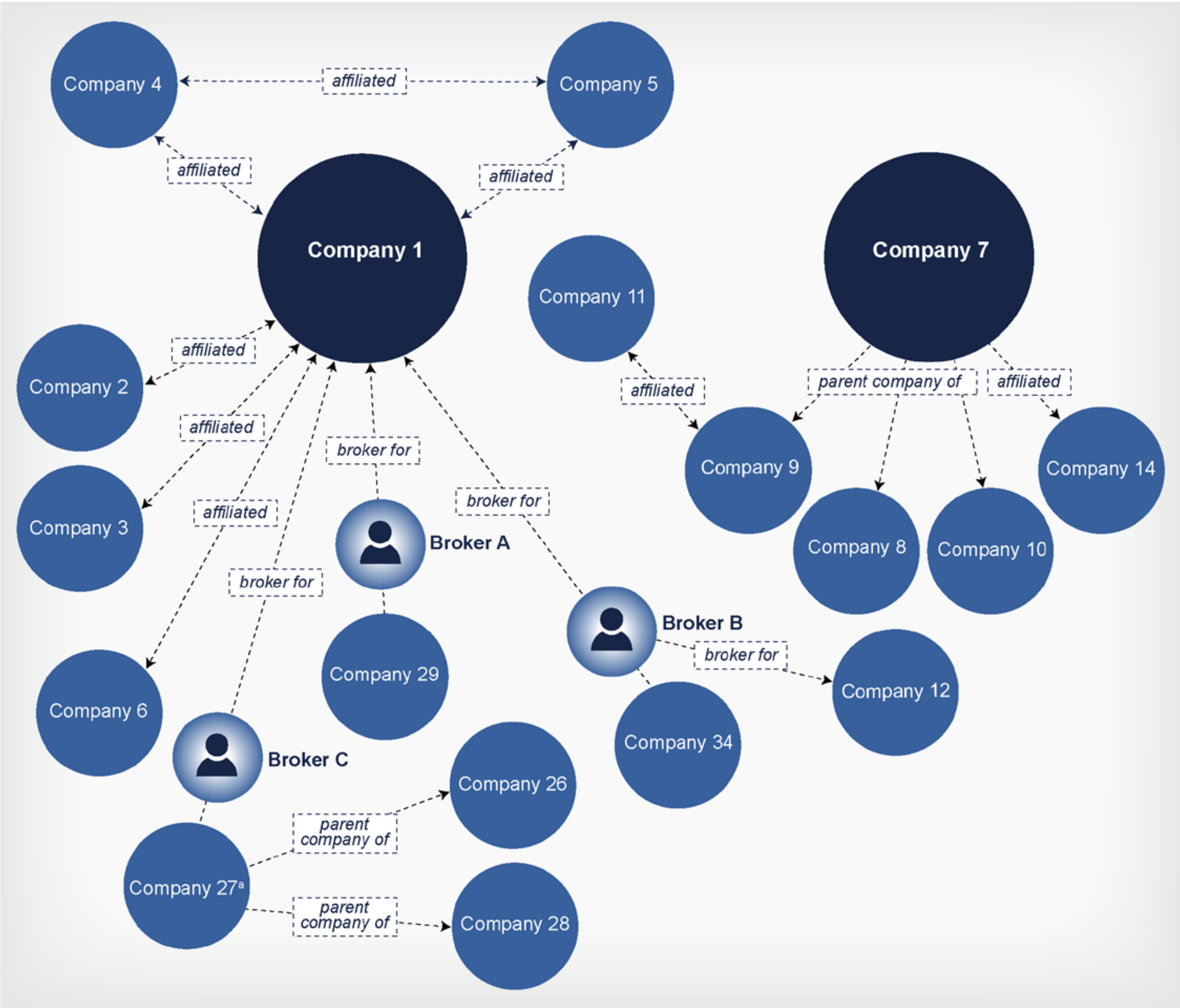
We also found that at least 30 out of 38 companies that we identified had a relationship or affiliation with each other, including working as a subsidiary or broker, or the companies were the same entity operating with more than one name.[16] However, only 9 out of those 30 companies clearly disclosed 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.

[14]The 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.

[15]The 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.

[16]For 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.

Figure 2: Two Examples of Identified Relationships between Companies Offering Pension Advances




Source: GAO analysis of company information. | GAO-15-846T

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

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

- 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.

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

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

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

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

[21] In 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-15-846T

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

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

[22]The 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.

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

## 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]

[24]26 U.S.C. § 417(e). The statute also prescribes how the plans must determine the present value of future benefits. In lump-sum options offered through pension plans, the lump-sum election is typically in lieu of the plan participant's remaining lifetime of payments. Because the pension advances used for these examples are for a predetermined number of years, our calculations have been adjusted accordingly.

[25]To arrive at the ERISA lump-sum amounts, we followed the Internal Revenue Code, section 417(e), which determines, for pension plans that offer lump sums, the minimum lump-sum amounts that must be provided for the pension plan to remain tax-qualified. These lump sums vary depending on the form and amount of a participant's promised benefit, the participant's age, and the particular year and month applicable to the calculation. Additional information about our calculations is included in the June 2014 report.

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

[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

[28]Since 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.

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

## 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

[31]During 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

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

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

[33]12 U.S.C. § 5493(d).

[34]The 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.

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