

October 13, 2016

Submitted electronically to:
FederalRegisterComments@cfpb.gov

Consumer Financial Protection Bureau
Office of the Executive Secretary
1700 G Street, NW
Washington, DC 20552

Re: RIN 3170-AA40
Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and
Open-End Lines of Credit

The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees and their families. The Consumer Financial Protection Bureau's Request for Information specifically seeks comment on consumer protection concerns that fall outside the proposed rule on payday loans but serve similar populations and needs. The Center appreciates the opportunity to comment on a deceptive financial transaction commonly called a "pension advance."¹

A pension advance is a lump-sum payment made in exchange for some or all of a retiree's monthly pension payments for a specified period of time. Because repayment of the lump-sum advance is expressed as a percentage of pension income over a period of months or years, interest rates and fees are hidden from the retiree. Businesses selling pension advances generally target military, government, or corporate retirees with steady pension income who have lower incomes or have low credit ratings. These retirees are vulnerable to internet advertising promising cash for pensions.

The Pension Rights Center has received complaints about pension advances from retirees who agreed to a pension advance but were unaware of the true costs of repayment because interest rates and fees were not disclosed. Two of these retirees were profiled by the *Washington Post*.²

By publishing a Consumer Advisory and filing a lawsuit, the CFPB has already taken the position that pension advances jeopardize the financial security of vulnerable retirees. We recommend that the Bureau undertake additional enforcement actions and also initiate a rulemaking project to put an end this predatory practice.

¹ Pension Rights Center, "The facts about pension advances" <http://www.pensionrights.org/publications/fact-sheet/facts-about-pension-advances>

² Washington Post, October 2015, "Some retirees are making a terrible mistake with their pensions," <https://www.washingtonpost.com/news/get-there/wp/2015/10/28/the-complicated-product-that-is-leaving-some-retirees-deeper-in-debt/>

BACKGROUND

As stated in the RFI, the Consumer Financial Protection Bureau (CFPB) is charged with ensuring that “markets for consumer financial products and services are fair, transparent, and competitive.” Pension advances, which are designed to skirt federal and state laws governing loans, are unfair, deceptive, and abusive.

Businesses selling pension advances typically claim that pension advances are not loans, and therefore, the businesses are not subject to the laws governing the selling and pricing of loans. However, a pension advance transaction is no different from a loan. Cash is provided up-front to retirees who contract to repay the cash advance in a specified period of time using money from monthly pension income. The fees and expenses charged to retirees receiving cash advances are hidden in the terms of the contract. The terms of repayment are not expressed as repayment of the cash advance, plus interest, but rather are stated as payments from pension income for a specified period of time. Thus, the true rate of interest for a lump-sum advance is not disclosed. Interest rates for pension advances are often extremely high and well in excess of state limits for loans.³

Some pension advance contracts require the retiree to establish a joint bank account with a pension advance company representative to receive some or all of the retiree’s monthly pension benefits. Thus, the retiree loses control over his or her pension income. Such an arrangement can be an illegal assignment of benefits under federal or state law. Retirees have no way of knowing when such an arrangement is unlawful.

Pension advance companies often recruit retirees as investors to provide the initial lump-sum payments with the promise of a guaranteed rate of return when the advance is repaid. Since pension advances may not be recognized securities, consumers may not have the legal protections that usually apply to investors.

Pension advances are harmful to retirees living on fixed incomes. Not only do they give up all or part of their much-needed pensions, retirees receiving an advance are denied the opportunity to seek better terms for a loan. In addition, retirees who invest in pension advance contracts may find the investment is not regulated or protected by securities laws.

RECOMMENDATIONS

We recommend that the CFPB exercise its oversight and enforcement authority to further investigate the business practices of pension advance companies and bring appropriate enforcement actions. In addition, we urge the Bureau to initiate a rulemaking project similar to that resulting in the proposed rulemaking on payday loans. Retirees seeking a loan or cash

³ United States Government Accountability Office (GAO), “Pension Advance Transactions: Questionable Business Practices Identified,” GAO-14-420, September 2015, p.23. <http://www.gao.gov/assets/670/663800.pdf>

payment must be able to compare the terms of a pension advance with other loan products offered in the marketplace, and must be protected when the terms of the pension advance violate state or federal law.

In spite of consumer alerts by federal and state agencies, suits in court, government hearings and reports, few consumers are aware of the risks of pension advances. As the GAO has pointed out, no single government agency has assumed responsibility for putting an end to deceptive pension advances. The absence of clear authority creates confusion for retirees, who do not know where to go for information or help, and leaves consumers without reasonable recourse.

We urge the CFPB to exercise its authority under Section 1021 of the Dodd-Frank Act to take the lead in stopping this unfair, deceptive, and abusive practice.

Sincerely,

A handwritten signature in cursive script that reads "Jane Smith". The signature is written in black ink and is positioned above the printed name.

Jane Smith