CARLTON FIELDS

CFPB and New York Department of Financial Services Sue Pension Loan Companies for Deceptive Marketing

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On August 20, the Consumer Financial Protection Bureau (CFPB) and New York Department of Financial Services (NYDFS) jointly filed suit against two pension loan companies and three individual managers for deceptively marketing pension advance loans to seniors and military personnel. In a 24-page complaint filed in California District Court, the CFPB and NYDFS assert that California companies Pension Funding, LLC (PF) and Pension Income, LLC (PI), and their principals, offered products described as "tailored financing programs," purporting to purchase, through lump sum payments, "eight years of future cash flow" from consumers' pension payments, but which were in fact pension loans with exorbitant interest rates. According to the complaint, between 2011 and 2014, PF and PI deceptively marketed the products to consumers with pensions from sources such as military and civil services, as "pension advances," lump-sum payments that consumers could receive in return for agreeing to direct all or part of their pension payments over eight years to repay the funds. Consumers who searched "retirement loans" or "military pension loans" were steered to a website that represented

the defendants would buyout a pension in a lump sum, and that it was not a loan. The website did not disclose any associated fees or interest rates. The complaint alleges the companies and their principals violated the Consumer Financial Protection Act (CFPA)'s prohibition on unfair, deceptive, and abusive practices (UDAAP) in offering consumer financial products and services by: **Misrepresenting the products as a sale and not a loan:** Contrary to representations made by the companies to consumers that the advances were not loans, but rather, a "sale" of their future pension income, the CFPB and NYDFS assert that product was a loan. **Failing to disclose or misrepresenting the interest rate and fees associated with the loans:** PF and PI also misrepresented or failed to inform consumers of fees and the applicable interest rate for the loans, according to the agencies. For example, in some cases, they misrepresented to consumers that the product was better than a home equity line of credit or a credit card because of lower rates, when the effective interest rate was in fact typically greater than 28 percent, higher than many comparable products available to consumers, such as credit cards and home equity lines. Charges for life insurance and other fees were also not disclosed. In addition to the claims for violating the CPFA by engaging in UDAAP, the NYDFS also asserts claims against PF and PI under New York state law, including violations of New York usury laws, illegally transmitting money without a license, and counts for deceptive advertising of loans, and intentional misrepresentation. The complaint requests injunctive relief, money damages, payment of redress to consumers, disgorgement, and civil penalties. In March, the CFPB issued an advisory to retirees with pensions warning of the dangers of pension advances, stating that repayment of such advances could reduce retirement income, and that pension advance companies typically charge high interest rates and fees and often target government retirees with pensions. The bulletin warns that military retirees and veterans who receive benefits from the Department of Veterans Affairs (VA) have been offered pension advances, is in violation of federal law that prevents veterans from automatically turning over benefits to third parties. The complaint illustrates the CFPB's continued commitment to protecting members of the military from predatory lending practices, as well as to joining forces with other agencies, including state regulators as well as state attorneys general for investigations and bringing enforcement actions. *Read the full complaint »*

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