

Introduction

Since its founding in 1969, the National Consumer Law Center has defended the consumer rights of low-income Americans who are victimized by unfair and exploitive transactions in the marketplace. Whether attacking predatory business tactics, safeguarding bedrock consumer protections, or calling attention to the plight of financially vulnerable families, NCLC promotes justice in the marketplace for all.

In 2004, NCLC carefully leveraged its resources to produce tangible benefits for low-income consumers across the United States. As a well-respected advocate in the nation's courts, legislatures, and regulatory agencies, NCLC used its influence and expertise to strengthen the income, assets, and economic security of millions of Americans.

Selected NCLC Accomplishments in 2004

Abusive Credit Counseling

More and more Americans are burdened by debt and struggling to make ends meet. In looking for help consumers sometimes fall prey to unscrupulous credit counseling agencies that not only charge excessive fees but give out bad advice.

NCLC Report Spurs Change

- Taking advantage of the public attention generated by our 2003 report, *Credit Counseling in Crisis* (with Consumer Federation of America), advocacy by NCLC triggered a series of positive developments for consumers:
 - The attorneys general of several states (who privately credited our investigation as the catalyst), filed suits against AmeriDebt, one of the most notorious of the new breed of counselors.
 - The Federal Trade Commission and the National Association of State Charity Officials heightened their scrutiny of credit counseling agencies and issued warnings to consumers.
 - The Internal Revenue Service investigated counseling agencies to see if they were violating the terms of their nonprofit status.
 - The two main industry trade associations adopted best practices standards.
 - The US Senate Permanent Investigations Subcommittee of the Government Affairs Committee held hearings and issued a report condemning some of the industry's worst players and abuses and called for stronger enforcement by the federal government.

Calling Attention to Weak State Enforcement

- In November 2004, NCLC released *Credit Counseling in Crisis Update: Poor Compliance and Weak Enforcement Undermine Laws Governing Credit Counseling Agencies*. The report investigated the

enforcement of credit counseling licensing and registration laws in eight states. It revealed that almost half of the agencies surveyed offered to perform services in states where these agencies were not licensed. The report also found that state regulators are neither adequately screening licensing applications nor bringing enforcement actions for misconduct.

Predatory Mortgage Lending

NCLC defended consumers against exploitive lending practices that targeted the assets of the most vulnerable consumers and drained precious wealth from low-income communities. In a host of state and federal forums, NCLC led efforts to craft solutions to this national threat to family economic security.

\$47 Million Settlement for Victimized Homeowners

- Homeowners across the country scored a major victory in a \$47 million class action settlement with Fairbanks Capital Corporation for its unfair, deceptive, and illegal practices when servicing subprime mortgage loans. NCLC participated as co-counsel to the plaintiffs in the case, *Curry v. Fairbanks Capital Corp.*

Most of Fairbanks customers were financially struggling low to moderate-income homeowners with few assets besides their homes. As documented in court filings and media reports, Fairbanks routinely misapplied mortgage payments, hit customers with bogus late fees and charges, and prematurely launched foreclosure proceedings against homeowners. In addition to distributing \$47 million to victimized homeowners, Fairbanks was required to make significant changes to its business practices.

New Massachusetts Anti-Predatory Lending Law

- With expert guidance from NCLC attorneys, Massachusetts enacted some of the nation's strongest protections against predatory home mortgage loans. The new statute places restrictions on high-cost mortgages that are predominantly sold in the subprime market to low-income and financially strapped homeowners.

The Massachusetts law prohibits prepayment fees or penalties on high-cost loans, mandates credit counseling for the consumer before closing, and requires lenders to have a reasonable belief that borrowers can repay the loan. An important section of the law says that violations of the high-cost provisions are likewise violations of the state's unfair and deceptive practices (UDAP) act.

New Research on Market Failures and Predatory Lending

- The Fannie Mae Foundation released a special issue of its journal, *Housing Policy Debate*, titled "Market Failures and Predatory Lending." The issue grew out of a research conference by the same name in May 2003 that was organized by NCLC and the Woodstock Institute, and supported by the Annie E. Casey Foundation and the Fannie Mae Foundation. The issue analyzes the phenomenon of predatory lending and its relationship to the subprime lending market, featuring articles by leading academics, researchers, and experts in the field. It should stimulate additional research and help formulate comprehensive and effective policy responses to the problem. The issue features an article, "An Overview of the Predatory

Mortgage Lending Process,” by NCLC’s Elizabeth Renuart. To order copies of Housing Policy Debate, see www.fanniemae.foundation.org.

Development of a Database Repository for High-Cost Mortgages

- With the goal of creating a permanent and credible source of valuable information on high-cost mortgage loans, NCLC is creating a database repository on subprime home mortgage loans from across the U.S. Thousands of loan documents will be collected (furnished voluntarily or through litigation discovery) and entered into the database. The data will be available to independent scholars, who will conduct research on the magnitude and impact of predatory lending practices on the assets of low-income Americans and the nation's housing market. Ultimately, the information gathered in the database will shape the development of policy reforms to reduce unfair and exploitive lending.

Exploitation of Military Personnel and Veterans

America’s military bases are surrounded by exploitive businesses that offer financial services at far higher costs than the mainstream market. Military personnel are considered prime targets because they earn a steady stream of income but are often low-income and financially inexperienced.

NCLC Helps Secure Necessary Protections

- NCLC’s report, *In Harm’s Way – At Home: Consumer Scams and the Direct Targeting of America’s Military and Veterans* (2003), educated lawmakers about the scope of the problem and spurred them to act. *In Harm’s Way* was featured in a legislative hearing in Georgia where military leaders warned that payday lenders were preying on young sailors and soldiers, endangering their morale, financial security, and combat readiness. The hearings led to Georgia’s enactment of what may well be the nation’s strictest restrictions on payday lending – a virtual ban of the practice. The report was also cited in the U.S. Congress and in legislatures in Washington State, California, North Carolina, and elsewhere.

Additional ripple effects have occurred around the country: JAG officials circulated the report worldwide, military leaders rallied against the predatory business ringing their bases, and NCLC assisted JAG lawyers in defending against scam businesses. Some base commanders expanded their off-limits designation of predatory businesses and others started to explore this option.

NCLC & Former Governor Take Aim at Veterans’ Benefits Scheme

- In a class action lawsuit, NCLC and former Georgia Governor Roy Barnes are representing veterans whose monthly benefits checks were targeted by unscrupulous “advance funding” companies. The veterans are seeking to void the loans in which their future benefits checks were traded for a lump-sum payment. The suit alleges that the loans’ unbelievably high interest rates – often 45 percent a year or higher – are usurious, the companies’ lack of adequate loan disclosures violates the federal Truth in Lending Act, and that any purchase of veterans’ benefits is illegal under federal law, making all such transactions void from the start. Also representing the veterans in the suit are attorneys M. Scott Barrett and Lynn Drysdale.

Refund Anticipation Loans

RALs are usurious (from 67 to 774 percent APR) short-term loans secured by the taxpayer's refund that are mostly sold by commercial tax preparers and their partner banks. Without the costly loan, most taxpayers could receive their refund free-of-charge in two weeks or less.

NCLC Shines Spotlight on High Cost of RALs

- In January 2004, NCLC and the Consumer Federation of America released a new report, *All Drain, No Gain: Refund Anticipation Loans Continue to Sap the Hard-Earned Tax Dollars of Low-Income Americans*. The report revealed that consumers paid an estimated \$1.14 billion in RAL fees and an additional \$406 million in “administrative” or electronic filing fees in 2002 to get quick cash for their refunds. Over 50 percent of RAL consumers were recipients of the federal earned income tax credit, despite the fact that EITC recipients only constituted 15 percent of all taxpayers.

NCLC drafted and disseminated a model RAL state law to educate advocates and policymakers. The model law limits RAL fees, prohibits various consumer-unfriendly practices, provides for mandatory disclosures in both wall postings and a disclosure sheet, and contains registration and bonding requirements

Mandatory Arbitration

The proliferation of mandatory, pre-dispute binding arbitration clauses in consumer contracts is being used to undermine a consumer's right to his or her day in court. Much of the damage, however, is occurring in the small print of everyday life and thereby “flying under the radar” of public and media attention. Arbitration clauses also undermine a decades-old policy mandate underpinning much modern consumer law: that private legal action through the courts should be the chosen method of enforcing these laws.

Mortgage Giants Say No to Arbitration

- Acting in response to advocacy by consumer groups, America's mortgage giants jumped onto the “no arbitration clause” bandwagon: Fannie Mae announced in February, following Freddie Mac's earlier announcement, that it will stop investing in subprime mortgages containing mandatory arbitration clauses. The two mortgage giants were already refusing to accept the clauses in most other home loans.

Fighting Anti-Consumer Arbitration Policies

- NCLC drafted model state legislation that protects consumers from some of the worst abuses of consumer arbitration agreements. NCLC has criticized versions of the Revised Uniform Arbitration Act, a model state arbitration law, which have been circulating in several states. With help from NCLC and its allies, two states, Wisconsin and Maryland, removed the RUAA from consideration. In Maryland, the RUAA was withdrawn early after both consumer groups and some business groups opposed it.

Bounce Loans

Banks are now offering expensive, deceptively advertised "bounce protection" to low-income consumers. In marketing what should be termed "bounce loans," banks advertise to consumers that they will cover overdrafts up to a set dollar limit. The banks then charge the usual bounced check fee, ranging from about \$20 to \$35 for each transaction that overdraws the account. Bounce loans are extremely costly for consumers. A \$100 advance for 30 days would typically carry at least a 243 percent Annual Percentage Rate. Over 14 days, the APR would be 541 percent.

NCLC and Consumer Groups Call for Truth in Bounce Loans

- NCLC and four other national consumer groups submitted comments to the Federal Reserve Board that urged the FRB to regulate bounce loans under the federal Truth in Lending Act. The groups argued that banks should be required to make the same disclosures and obtain the same consumer consent as payday lenders, pawnshops, and finance companies. The comments also sought prohibitions on bank advertisements for bounce loans that encourage consumers to use overdrafts for their credit needs.

Auto Finance Loan Bias

When financing their cars at automobile dealerships, consumers have unwittingly paid hundreds of millions annually in undisclosed auto finance "markup" charges. Although consumers are led to believe that they are receiving rates based on their credit ratings, dealers often raise the auto loan rates at their own discretion. The subjective nature of the dealers' markup has led to industry-wide discrimination against minority consumers.

NCLC Secures Major Settlement for Minority Car Buyers

- In a major victory for African-American and Hispanic car buyers, General Motors Acceptance Corporation agreed to settle a class action lawsuit over loans made to minority customers of the auto finance giant. The lawsuit against GMAC charged that black and Hispanic car buyers pay more for credit as a result of its finance charge "markup" policy. For decades, GMAC (the nation's second largest auto lender), authorized dealers arranging financing for them to increase the interest rate on customers' contracts beyond that required by the customers' credit rating. This markup was not disclosed to the consumer. Expert reports submitted to the court concluded that minority auto finance customers of GMAC were marked up more frequently and at significantly greater rates than white customers with comparable credit ratings.

GMAC agreed to impose a 2.5 percent markup cap on loans with terms up to 60 months, and a cap of 2 percent on extended term loans. Before the case was filed in 1998, GMAC had no markup cap limits on any of its consumer auto loans. While the case was being litigated, GMAC imposed a cap of 4 percent in 2001 and 3 percent in 2002. This and similar suits brought by NCLC against other companies are changing lending practices nationwide.

Student Loan Advocacy

For a low-income person with limited job skills, education is a long-term investment that can offer a path out of a low-wage career and open the door to a more secure economic future. Many poor people, however, simply cannot

afford to return to school unless they receive student loans and grants. Even if they receive financial assistance, poor students need protection from exploitive tactics by trade schools that can wreck their finances.

NCLC Urges Policymakers to Halt School Fraud

- In joint testimony submitted to the U.S. House Committee on Education and the Workforce, NCLC, the Center for Law and Social Policy, and the Workforce Alliance urged lawmakers to protect student loan borrowers against for-profit vocational school fraud and abuse. The testimony cited on-going abuses such as schools closing without warning, routine fabrication of financial aid documents, and misrepresentation of the value of educational programs and job prospects.

Instead of eliminating key protections as proposed in a pending bill before the House, the three organizations recommended that Congress immediately undertake a nonpartisan study of current fraud and abuse and the effectiveness of current protections. In addition, the testimony urged lawmakers to allow borrowers to submit evidence of a disability determination by the Social Security Administration or the Veteran's Administration when applying for a cancellation of their student loans due to disability. NCLC's testimony helped lead to a "60 Minutes" story that exposed vocational school fraud and also contributed to another hearing being held by the House Committee on Education and the Workforce.

Affordable Home Energy and Utilities Services

As energy prices continue to rise, more families are cut off from essential gas, electric, and telephone services because they cannot afford to pay the bills. Losing utility services has serious consequences, especially for the health and safety of children or elders in the household.

Discount Utility Rates Secured for Massachusetts Households

- In December 2004, after persistent advocacy by NCLC, the Mass. Department of Telecommunications and Energy (DTE) ruled that gas and electric utilities must automatically provide discounts to customers who also receive certain income-tested state benefits. Over 350,000 eligible households do not receive discounts and we expect thousands, possibly tens of thousands, of new households will be enrolled through this automatic enrollment process, saving them anywhere from \$150 to almost \$1,000 annually.

Federal Lifeline Benefits Expanded

- Frequently citing comments submitted by NCLC, the Federal Communications Commission recently issued a ruling that expanded eligibility for the federal Lifeline program. Lifeline helps support telephone service to millions of low-income consumers by providing significant discounts off household monthly phone bills (the amount varies by state).

Previously, to be eligible for the program, federal rules required the consumer to certify that he or she participated in at least one of several government assistance programs. Pointing to program enrollment rates of only 33 percent, the FCC expanded Lifeline eligibility to all households earning up to 135 percent of the federal poverty guidelines, whether or not the household receives government assistance. The FCC also added the National School Lunch's free lunch program to the federal default eligibility criteria. It agreed with NCLC's position

that low-income households are more likely to participate in the school lunch program than other public-assistance programs, due to a perceived difference in social stigma.

New Guide for Advocates

- NCLC published *A Consumer's Guide to Intervening in State Public Utility Proceedings*. It will help community-based organizations that deliver energy programs to low-income households get involved in utility proceedings and advocate for reliable and affordable utility service for low-income customers. The *Guide* will make it much easier for local groups to get involved in proceedings before state utility commissions on energy efficiency and energy affordability issues.

Abusive Child Support Collection Agencies

Over the last decade, an unregulated fringe industry has grown rapidly, primarily over the Internet, to aggressively and sometimes deceptively market child support collection services to mostly low-income single mothers who cannot afford an attorney. Private child support collection companies often fail to deliver any genuine services. Instead, they strip income from low and moderate-income families that could have been spent on housing, childcare, clothing, and school expenses, and trap them in perpetual contracts. These companies exploit the child support indebtedness of low and moderate-income non-custodial parents through the use of predatory and abusive tactics that increase their debt levels and often damage their credit histories.

New Illinois Law Curbs Collection Agency Abuses

- In testimony submitted to the Illinois legislature, NCLC's Stuart Rossman called on lawmakers to support a bill curbing industry abuses. The legislation, which was signed into law by Governor Blagojevich last August, prohibits such agencies from attaching fees to child support paid on time and, pending the outcome of a rate setting procedure, caps at 29 percent the amount charged for collecting child support arrearages.

The Illinois law also bans collection agencies from charging fees on support collected through government action; for example, the interception of tax refunds to satisfy unpaid support. Some agencies charge fees as high as 50 percent of collections, and they take fees out of on-time support payments and government initiated collections.