

**SEMI-ANNUAL PERFORMANCE REPORT
OF
THE NATIONAL CONSUMER LAW CENTER
TO THE ADMINISTRATION ON AGING**

**Second Half of the Grant Year
(April 1, 2002 through September 30, 2002)**

**National Legal Resource Initiative for
Financially Distressed Older Americans**

Ref: Grant Number 90-AP-2483

The following report summarizes the work of the National Consumer Law Center's Initiative for Financially Distressed Older Americans from April 1, 2002 through September 30, 2002. This report focuses on work that has been funded by the Administration on Aging grant. However, other relevant work that has been funded through other means but which has a significant impact on senior consumers is also included. A sampling of written work is attached.

Summary of NCLC Activities During This Period

NCLC's advocacy covers a range of critical issues that affect consumers. This range continues to grow as we focus, among other topics, on predatory lending and financial abuse of seniors, identity theft and credit reporting issues, credit discrimination, long-term care, medical debt, and energy and utility issues. In addition, during this reporting period, NCLC co-sponsored a first-time conference on restoring just and reasonable electricity rates. More on this conference as well as a summary of NCLC's work in other consumer areas that impact seniors is reported below. A copy of the most recent edition of NCLC's newsletter, "Outlook", attached at Appendix A, gives a broader perspective on our work.

Case Consultations

NCLC staff handle intake calls from advocates nationwide. Our records indicate that we receive at least one call every day from an advocate representing a senior client in a consumer case. Thanks to funding from AoA, we are able to provide intensive assistance and case advice to these advocates. A few highlights of this work are summarized below:

- A legal services attorney from Connecticut called regarding an elder client who had received an unsolicited unsecured loan in the mail from a predatory lender. The lender failed to send the client all of the required disclosures, including information about the true cost of the loan. The client cashed the check but was then unable to afford the exorbitant monthly payments. The lender refused to negotiate a payment plan. NCLC intake staff discussed possible claims including Truth in Lending as well as state consumer protection claims. A lawyer from

California Rural Legal Assistance in California called with a similar case involving the same company.

- An Ohio attorney called regarding an elderly couple's lawsuit against a notoriously high rate mobile home financing lender. The couple had purchased the mobile home a few years ago. They are still making their payments, but are severely stretching their budget to do so. To make matters much worse, the mobile home dealer misrepresented the condition of the home and the clients have been unable to fix all of the defects. They are suing both the dealer and lender. Their attorney called to consult with NCLC on these claims. Among other issues, NCLC staff explained that this very expensive loan met some of the standards for a "high rate loan" under the federal Home Ownership Equity Prevention Act (HOEPA). However, because this was a purchase money mortgage, HOEPA did not apply. In this case, the lender took, among other fees, a 7% "discount fee" as well as charging the borrowers 2% of the loan as origination fees. All of these fees went straight into the lender's pocket. NCLC staff attorneys discussed alternative ways to hold both the dealer and lender liable, including possible state unconscionability claims. The lender has also moved to compel arbitration. This issue is currently being litigated.
- NCLC worked with Greater Boston Legal Services to help an elder client apply for a disability discharge of her student loan. The discharge was finally granted in summer 2002. The result is that the severely disabled client's Social Security Disability benefits are now protected from seizure. Her loan is now completely cancelled and Social Security funds previously seized were returned.

Outreach and Dissemination

NCLC sent out a nationwide mailing to senior advocates in September 2002. The mailing included a number of new consumer education materials for advocates and for seniors themselves. The new materials sent in the September mailing included:

- Consumer Concerns on The High Cost of Payday Loans
- Consumer Facts on Identity Theft
- updated brochure on debt collection harassment

The mailing also included order forms for NCLC's practice package publication, "NCLC Guide on How to Buy a Manufactured Home." Elder advocates using this form to order a free copy also receive a floppy disk with a number of mobile home related legal pleadings. Copies of all of these materials as well as an updated list of consumer education materials are attached at Appendix B.

In addition to consumer education materials, the mailing included a survey about NCLC's case consultation services. We are currently receiving responses and will report on the results in the next performance report. We plan to use the survey results to help improve our consultation services and to assist us as we begin to more closely track the outcomes of our case

consultations. A copy of the survey is attached at Appendix C. We also posted a downloadable version on the seniors initiative section of our web site.

NCLC's web site got a new look during this period. The site, including the "Seniors Initiative" section was completely overhauled. (See www.consumerlaw.org).

Throughout this period, NCLC continued to run and participate in numerous national list serves of interest to senior advocates, including list serves on mobile home issues, predatory mortgage lending, payday loans, automobile fraud, student loans, electronic benefits transfer and fair credit reporting. NCLC attorneys also continued to participate on the National Association of Attorney General's elder group calls.

Trainings and Conferences

Trainings and conferences are a key component of our program. The demand for NCLC's expertise to train attorneys and lay advocates is consistently high. We make a concerted effort to mail invitations to trainings to our list of senior advocates when appropriate and also publicize the events on our web site. NCLC trainings and conferences during this reporting period included:

- NCLC led a number of trainings during this period as part of Freddie Mac's Don't Borrow Trouble campaign, including trainings in Philadelphia on April 8, 2002, Milwaukee, WI on April 25, 2002, Orlando, FL on August 14, 2002, Rhode Island on September 17, 2002.
- Cleveland, Ohio, April 19-21, 2002. Staff attorney Elizabeth Renuart co-taught a workshop on predatory mortgage lending at the annual NLADA/ABA Equal Justice conference. The other panelists were Kathleen Engel, Professor of Law at Cleveland-Marshall School of Law and Devon Sanders, staff attorney at Community Legal Services in Philadelphia.
- Boston, Massachusetts, May 13, 2002. Staff attorney Chi Chi Wu gave a presentation on spotting consumer issues in a legal services caseload as part of the Massachusetts Law Reform Institute's training on cross-substantive representation.
- Portland, Oregon, June 6-7, 2002. Staff attorney John Rao co-taught a two day training on predatory mortgage lending. The session was sponsored by Legal Aid Services of Oregon. About 50 attorneys attended.
- Seattle, Washington, June 11, 2002. Staff attorney John Rao led a training on predatory mortgage lending for about 50 pro bono and legal services lawyers. The session was sponsored by the Seattle Office of Housing and the Housing Justice Project/Volunteer Legal Services.

- San Jose, California, June 20-21, 2002. Staff attorney Elizabeth Renuart, along with other advocates, led a two day training on predatory lending. The training was coordinated by a new coalition forming in the San Jose area to fight predatory lending.
- Snowbird, UT, June 23-25. NCLC's litigation director Stuart Rossman presented a number of workshops at the NLADA Litigation and Advocacy Directors Conference. This event was co-sponsored by the AARP Foundation and the Litigation Section of the ABA. Mr. Rossman's spoke on a number of topics including predatory lending, access to utilities, and using technology in litigation.
- Colorado Springs, July 24-28, 2002. Staff attorneys Deanne Loonin and Chi Chi Wu taught the consumer law track at the annual NLADA substantive law conference. The session focused on student loan issues, debt collection harassment, and credit reporting. NCLC also held a joint session with the National Senior Citizens Law Center on Social Security offsets as well as a separate workshop on reverse redlining.
- Phoenix, Arizona, September 23-24, 2002. Staff attorneys John Rao and Elizabeth Renuart led a state-wide training on predatory lending. The sponsor of the event was the William E. Morris Institute for Justice, Arizona's legal services support center.

Deanne Loonin participated throughout this period on the planning committee for the third annual National Aging and Law Conference, held in Crystal City, VA October 23-26, 2002. In addition, Chi Chi Wu provided support to The Access Project, a national healthcare access advocacy organization, for their training on medical debt issues in West Palm Beach, Florida in July 2002.

NCLC continued to expand its immigrant consumer rights project during this period. Chi Chi Wu led a session in Atlanta on immigrant consumer rights in April while Deanne Loonin taught a similar workshop in New York City in May 2002. Ms. Loonin also co-taught sessions on consumer law for immigrant legal services, private and pro bono attorneys in Chicago in June 2002. A summary report of this project will be available in fall 2002.

Finally, NCLC's 11th annual consumer rights litigation conference was held this year in Atlanta from October 25-28, 2002. A diverse audience of over 500 attended, including many elder advocates. In addition to the main conference, NCLC offered a mini-conference on predatory mortgage lending, a post-conference session on achieving long term change in predatory lending through legislation, and a class action symposium. More information about the conference will be included in the next semi-annual report.

Electric Industry Restructuring Conference

On September 28 and 29, NCLC along with the American Public Power Association, Campaign for Ratepayer Rights, Citizen Power, Utility Workers Union of America and others co-sponsored a first-time conference, "Electricity: Too Important to Leave to the Market." A conference brochure is attached at Appendix D. The conference was held in Washington, D.C. About 150 attendees discussed strategies to restore just and reasonable electricity rates. Conference participants prepared a conference resolution, available on-line at RestoreJustRates.org.

Substantive Issues: Focus on Mobile Homes and Identity Theft

Mobile/Manufactured Homes

Mobile home issues are of particular relevance to elder clients. Approximately 2.8 million mobile homes are owned or rented by a person age 50 or older, comprising 41% of all mobile homes that are occupied as a primary residence. In 1999, 750,000 mobile homes had a household head between the ages of 65 and 74 and 620,000 had a household head age 75 or older. According to statistics compiled by AARP, mobile (or manufactured) homes have become a major source of new housing in recent years, representing about 19% of all new single-family housing in 1999. About 31% of these homes were purchased by someone age 50 or older. Compared to owners of conventional single family housing, a much higher proportion of mobile home owners 50 and over were low-income.

During this reporting period, on behalf of AARP, NCLC updated a model mobile home law that was originally published in 1992. This project involved summarizing the mobile home park laws of every state that has one and also involved consultations with mobile home park residents, legal services attorneys, state enforcement personnel, and others. AARP is currently reviewing the completed draft.

NCLC also released a new publication on mobile home issues, NCLC Guide To Mobile Homes. As discussed above, an order form for this guide was sent out to elder advocates nationwide as part of our September 2002 mailing. For these advocates only, we have made available a companion floppy disk containing mobile home related legal pleadings. Among other activities, NCLC also runs a list serve for advocates on mobile home issues.

Identity Theft

Identity theft is one of the fastest growing crimes in the country. This is also a crime that particularly impacts elders, many of whom have attractive credit identities to steal. Compared to younger consumers, seniors, in general, have better credit ratings and less debt. Elder consumers in some cases are also less aware of the potential dangers of identity theft and may take fewer precautions to protect themselves.

Reflecting this concern, the Senate Special Committee on Aging held a hearing, "Identity Theft: The Nation's Fastest Growing Crime Wave Hits Seniors" on July 18, 2002. In addition, NCLC released a new Consumer Facts during this period on this topic. See Appendix B. This information sheet focuses mainly on helping seniors prevent the crime. There is also a separate

section on the topic in NCLC's manual Fair Credit Reporting. We will continue to monitor the issue and work with policymakers and others to help prevent the crime and provide greater relief for victims.

New Publications

During this reporting period, NCLC released a number of important updates to the consumer law manual series. Supplements to the following publications were released in December 2001:

- 2002 Supplement to The Cost of Credit
- 2002 Supplement to Unfair and Deceptive Acts and Practices
- 2002 Supplement to Consumer Warranty Law
- 2002 Supplement to Fair Debt Collection

NCLC also released a new edition, the third edition, of Credit Discrimination as well as new editions of Consumer Arbitration Agreements, Consumer Banking and Payments Law. and a new Consumer Law in a Box CD-Rom.

Issues of NCLC's newsletter, *NCLC Reports* contained numerous articles of interest to senior advocates. For example, the July/August 2002 Debt Collection and Repossessions edition included a summary of NCLC's lawsuit challenging the government's practice of offsetting Social Security funds to collect old student loans. The September/October 2002 Consumer Credit and Usury newsletter focused on predatory lending topics, including the recent FTC and private class counsel settlement of abusive lending claims against the Associates and Citigroup and new provisions under the Home Mortgage Disclosure Act (HMDA) requiring lenders to collect data about subprime lending. Copies of these newsletters are attached at Appendix E.

NCLC staff wrote two articles for the Clearinghouse Review, "Pursuing Racial Justice" series. The first article written by Deanne Loonin and titled, "Credit Discrimination and Consumer Law: What Legal Services Can Do To Attain Justice in the Marketplace" was published in the May/June edition of Clearinghouse Review. The second article by Stuart Rossman on NCLC's auto financing discrimination litigation was published in the July/August edition. Copies of both articles are attached at Appendix F.

An article by NCLC's NAPIL fellow Amy Marshall on the impact of electronic benefit issues on seniors will be published in an upcoming edition of the ABA's Bifocal newsletter.

Administrative Advocacy

NCLC staff work closely on consumer protection issues with a number of federal and state agencies. Below is a brief summary of some of our administrative advocacy during this period:

- In April 2002, NCLC, along with the National Association of Consumer Advocates, Consumer Federation of America, Consumers Union, and the U.S.

Public Interest Research Groups filed comments with the Federal Trade Commission regarding proposed amendments to the Telemarketing Sales Rule.

- In June 2002, NCLC filed comments to the Office of Thrift Supervision regarding the proposed amendment of the regulations issued pursuant to the Alternative Mortgage Transactions Parity Act.
- In August 2002, NCLC along with the Consumer Federation of America, Consumers Union, and the U.S. Public Interest Research Group filed comments on the Internal Revenue Services' proposed agreement to provide free services for online tax filing services. The comments focused on the risk that beneficiaries of this "EZ File" partnership might become a captive audience for the marketing of refund anticipation loans.

All of these comments are available on NCLC's web site.

- Throughout this period, NCLC has worked closely with HUD on new Real Estate Settlement Procedure Act (RESPA) rules that will change the procedures for all mortgages.

Litigation and Amicus Briefs

NCLC appeared as amicus curiae in a number of cases during this reporting period, including:

- *Lopez v. Washington Mutual* (9th Cir. May 2002). The Social Security Act prohibits a creditor from using legal process to seize Social Security funds. A three judge panel of the 9th Circuit decided that a bank had violated this exemption by "offsetting" deposited Social Security funds to pay an overdraft that had been advanced under an overdraft protection plan. NCLC's brief opposed a reconsideration of the panel's decision. The court, however, did reverse itself. NCLC filed another amicus brief along with AARP in September 2002, supporting the request for a rehearing en banc.
- *State Banking Dept. v. Ala. Check Cashers Ass'n* (Ala S. Ct. Aug. 2002). NCLC joined AARP and the Consumer Federation of America requesting that the decision of the lower court be reversed. The lower court held that payday loans were not covered by the Alabama Small Loan Act. Amicus argued that the interpretation was unduly narrow since the Act applied to loans and excluded automobile title pawns, but not payday loans.
- *Natural Resources Defense Council v. Spencer Abraham, Sec. of Energy* (2nd Cir. Sept. 2002). The amicus argued that the Department of Energy's postponement and then reduction of the prior administration's increased efficiency standards for central air conditioners was not based on the evidence and contrary to the record in the proceedings.

Although NCLC did not formally sign the brief, we consulted with others on an amicus brief in a case involving whether the Illinois predatory mortgage regulations are preempted by the Alternative Mortgage Transactions Parity Act (AMTPA).

In other litigation news, NCLC's cases against two major auto finance lenders, Nissan Motors Acceptance Corp. and General Motors Acceptance Corp. continued to move forward. In October, the court granted Plaintiff's motion to recertify a class for declaratory and injunctive relief claims.

There were also developments during this period in the lawsuit NCLC filed with co-counsel Public Citizen Litigation Group and Oakland Livingston Legal Aid, challenging the government offsets of Social Security funds to collect old student loans. The case was brought on behalf of three individual low-income elder clients.

The NCLC Reports article attached at Appendix E summarizes the Judge's March 2002 preliminary injunction ruling in this case. A summary judgment motion hearing occurred in July. The court published its decision on the summary judgment in late September. The ruling, for the most part, mirrored the Judge's preliminary injunction ruling.

The court agreed that there is a ten year limit on the government's ability to offset Social Security funds to collect student loans. As a result of this ruling, the government was permanently enjoined from offsetting the benefits of one of the elder (and disabled) plaintiffs. The court denied summary judgment for the other plaintiff on the grounds that the ten year limit had not yet been reached in her case. NCLC and co-counsel are appealing this aspect of the decision to the Sixth Circuit.

The third elder plaintiff in the lawsuit applied for and received a disability discharge of his student loan during this period. He had taken out a loan to finance his son's education in 1990. Primarily due to his disability, he was unable to make payments on the loan. His loan has now been discharged and all funds previously offset from his Social Security returned. He is no longer a party to the lawsuit.