

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

**Second Half of the Grant Year
(April 1, 2003 through September 30, 2003)**

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

Ref: Grant Number 90-AP-2640

The following report summarizes the work of the National Consumer Law Center's Initiative for Financially Distressed Older Americans from April 1, 2003 through September 30, 2003. 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.

Case Consultations

NCLC receives approximately 3-5 calls each week from advocates representing elder clients in consumer cases. A brief summary of these calls is listed below:

- A legal services attorney in the Boston area called NCLC about an elderly client. The client had been sued by a collection agency for past due credit cards. She did not respond to the lawsuit mainly because she was recovering from cancer surgery. When she got notice of a post-judgment examination, she wrote the collection lawyer saying that she needed it rescheduled due to chemotherapy treatments. The lawyer did not respond and a warrant for the client's arrest for failure to appear was issued. NCLC advocates advised the attorney on how to help the client respond to the warrant and avoid arrest.
- NCLC advised Connecticut legal services attorneys in a case involving Social Security offsets for past due student loans. The 70 year old client's only source of income was Social Security. The Treasury Department began offsetting her benefits to collect a student loan that the client never signed. NCLC advised the attorney on how to get a cancellation of the loan based on forgery and also regarding possible legal challenges to the offset. The Department eventually agreed to cancel the client's student loan. Not only was the offset terminated, but the client also received a

check for the total amount of benefits previously offset. The Connecticut attorney reported to NCLC, “We couldn’t have been successful on this case without your help and patience.”

- NCLC worked with West Virginia Legal Aid to help analyze loan documents of an 85 year-old woman. Within the previous two years, the client had received four loans, both secured and unsecured. The larger home loan refinanced a previous mortgage. The loans were from three different lenders and the total monthly payment, not including any amount due on an open-end home equity line of credit was almost \$900. The client lives on a fixed income of about \$1400. She obtained these loans as a part of series of financial transactions initiated for her by a “friend” who also stole money from her bank accounts. The “friend” no longer has access to her money. Nevertheless, the lenders approved loans for her that were clearly unaffordable. NCLC reviewed the loan documents and identified a variety of possible legal claims. It appears likely that the client will not be liable for the full amount borrowed.
- Greater Boston Legal Services called about an 85 year-old client who was sued by a major creditor for alleged credit card debt. He received only one debt collection letter followed by a number of harassing phone calls. The social worker at the elderly housing complex where the client lives found out that the collection agency had the wrong social security number in their files. As the client had reported, the debt at issue did not belong to him. The social worker called the collection firm and told them that they were pursuing the wrong consumer. The firm promised to take care of the problem. Instead, they sued the client for the full amount due. NCLC consulted with the attorneys at GBLS about possible fair debt collection practices act violations.
- NCLC provided extensive advice to lawyers at Central New Jersey Legal Services representing a 76 year-old predatory lending victim. The client lives in a household with her 102 year-old mother and two minor grandchildren. The household’s income consists entirely of Social Security and public assistance benefits. The client is the sole owner of the home. She entered into a home equity/refinance mortgage transaction in 2000. The loan was later assigned to a large national lender. She has been able to scrape by to make the payments, but just barely. The monthly payments are nearly \$1000/month, nearly 2/3 of the entire household income. NCLC worked with Central New Jersey Legal Services to figure out possible claims to rescind the mortgage. Specifically, we discussed arguments to prove that the loan qualifies as a “high rate loan” under federal law. Among other violations, the lender did not give the disclosures required when a loan qualifies as high-rate. The attorney sent a letter of rescission and is waiting to hear back from the lender.

- A New Hampshire legal services hotline attorney called NCLC for advice regarding an elder client whose credit card account was bought by a collection agency. The collection agency had invoked an arbitration provision in the credit card agreement in an attempt to collect from the client. NCLC advised the attorney of the client's options, including whether to participate in the arbitration or try to avoid it on the basis that the arbitration provision was with the credit card company, not the collection agency. NCLC also discussed possible fair debt collection issues.
- Staff attorney Deanne Loonin was interviewed by Connecticut Public Television for a multi-part series on elder abuse. The series was scheduled to air during the summer or fall 2003.

In addition, during this time period, NCLC developed a new system to track case consultation calls. We set up a new data base that is now included on every advocate's computer desktop. A copy of the basic intake form is attached as Appendix A. Cases involving elder clients are marked as "AoA" and designated for special follow-up.

Outreach and Dissemination

National Mailing

In August 2003, we sent our annual mailing to about 1,500 elder advocates and legal services program offices. The mailing included a cover letter and a new consumer education brochure, **High Cost Home Loans: Don't Be a Target**. The English and Spanish versions of the brochure are available on our web site. A Chinese language translation will be available for downloading soon. The mailing also included two of our latest Consumer Concerns newsletters, "Home on Wheels: Helping Mobile Home Owners Stay Put" and "Getting the Home You Deserve: Advice for Mobile Home Owners." Copies of the mailing contents are included at Appendix B. Finally, the mailing also contained an order form for our new practice package publication, **Social Insecurity: Understanding Federal Benefits.**"

Web Site

We continued to expand our web site during this reporting period (www.nclc.org). Among other activities, we updated all the utility and telemarketing newsletters on the site.

List Serves

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.

Networking with Other Elder Advocates

We maintained and expanded our connections with elder advocates in a number of ways. We participated in National Association of Attorney General (NAAG) elder subcommittee calls throughout this time period. We also worked closely with legal services programs working to expand their consumer law representation of elders. Staff attorney Deanne Loonin had previously met with lawyers from Connecticut Legal Services to advise them on their new elder consumer hot line program. We also supported a grant proposal submitted by New Hampshire Legal Services to develop a similar program. We look forward to working with New Hampshire attorneys as they begin to implement this exciting new system to expand representation of elder consumers.

Advisory Committee

On April 21, 2003, we held a phone conference meeting of the Project's Advisory Committee. The meeting focused on fair debt collection issues and credit card debt. We also discussed ways in which NCLC could more effectively collaborate with national, state and local elder advocates.

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:

- Springfield, IL, April 3-4, 2003. NCLC staff attorneys Elizabeth Renuart and John Rao taught a two day session on predatory mortgage lending to about 45 legal services, private, fair housing and government attorneys. The session was co-sponsored by Land of Lincoln Legal Services.
- Austin, Texas, April 4, 2003. Staff attorney Tony Rodriguez provided a training on "Consumer Law Issues and Assistive Technological Devices" to attorneys and other advocates for persons with disabilities. The conference and training were sponsored by the National Assistive Technology Advocacy Project of Neighborhood Legal Services in Buffalo, NY and Advocacy, Inc. in Austin, Texas.
- Portland, Oregon, April 10-12, 2003. Staff attorney Chi Chi Wu trained conference participants at the ABA/NLADA-sponsored Equal Justice

Conference. The sessions focused on predatory lending and domestic violence representation.

- Chicago, IL, May 17-18, 2003. NCLC and the Woodstock Institute organized a symposium on market failures and predatory lending. More details about this symposium are included below.
- Norwich, Vermont, June 6, 2003. NCLC Deputy Director Bob Hobbs trained a number of advocates from Vermont Legal Aid. The training focused on fair debt collection issues and medical debt collection strategies.
- Baltimore, Maryland, July 13-16, 2003. Staff attorney Deanne Loonin co-taught a session on consumer connections to an elder law practice at the annual National Association of Area Agencies on Aging conference.
- Los Angeles, California, July 24-26, 2003. Staff attorney John Rao led a track on bankruptcy and consumer law at the annual NLADA substantive law conference.
- Rochester, NY, August 12, 2003. Staff attorney Elizabeth Renuart led a session on predatory mortgage lending, focusing on the state attorney general's settlement with Household Finance and Beneficial Finance. The settlement affects consumers who received Household or Beneficial real estate secured loans or live check loans that were paid off with the proceeds of a Household/Beneficial real estate secured loan originated during the time period covered by the lawsuit.
- Washington, D.C., September 25, 2003. NCLC attorney Carolyn Carter led a training for about 15 volunteer attorneys recruited by the D.C. Bar Association to advise and represent Household Finance borrowers. The training focused on how to evaluate whether the borrower should accept the Household settlement negotiated by state Attorney General offices.
- Lansing, Michigan, September 25, 2003. Staff attorney Odette Williamson taught sessions on foreclosure prevention and federal benefits offsets at the elder law session of the annual Michigan Poverty Law Program Roadshow Training.
- With support from the Ford Foundation, NCLC and the National Housing Law Project (NHLP) continued a series of trainings on predatory mortgage lending. Trainings during this time period were held in Richmond, Virginia May 21-22, 2003 and on September 24-25 in Indianapolis. Approximately 50 people attended the Virginia training and about 65 attended in Indiana. The audience included legal services, private, fair housing, and government attorneys.

In addition, during this time period, staff attorney Deanne Loonin participated as an advisory committee planning member for the National Aging and Law Conference, held in Crystal City, Virginia in October 2003.

Focus on Predatory Lending Symposium: Chicago, May 17-18, 2003

Over ninety of the nation's most prominent experts on predatory lending gathered at the John Marshall Law School in Chicago on May 17 and 18, 2003 for the Symposium on Market Failures and Predatory Lending: Setting the Foundation for Reform. The Symposium, sponsored by NCLC and the Woodstock Institute, was designed to stimulate more carefully crafted research on the predatory lending industry and its consumers.

In addition to establishing a clear road map for future research on predatory lending, the Symposium fostered new thinking and approaches. The Symposium gathered a diverse group of researchers, academics, selected lenders and secondary market representatives, attorneys, consumer and housing advocates, and government officials.

Substantive Issues: Focus on Credit Card Debt and Seniors

Credit card debt in the United States is rapidly approaching \$700 billion. This unfortunate trend is growing fastest among older consumers. Once known for their thrift, older Americans are piling on debt, filing for bankruptcy in record numbers and cutting into hard-earned retirement funds. Household debt for those 65 and older is skyrocketing—up 164% on average in eight years, to \$20,302 in 2000, according to SRI Consulting Business Intelligence. That compares with a 92% increase for those younger than 65. Because many seniors own homes and have good credit records, they have a higher capacity for debt than younger people.

Nearly half of the elders who end up in bankruptcy say that they filed because of a medical reason, according to a Harvard study. Many have no choice but to turn to credit cards to pay for skyrocketing prescription drugs and other health care expenses. In other cases, seniors co-sign for children, grandchildren, friends and relatives and end up stuck with the bills. Perhaps most common, seniors living on a fixed income are simply unable to bounce back from unexpected expenses related to home upkeep or other necessities of life. The drop in value of many retirement funds over the past few years is another contributing factor to growing debt among seniors.

NCLC is focusing on this alarming trend in a number of ways. Our consumer education information for advocates and consumers helps consumers shop wisely for credit cards. NCLC's publication *Surviving Debt* contains important information about basic budgeting and prioritizing debt issues.

We also work closely with elder advocates to help them counsel seniors on how to deal with mounting debt. Many simply need to learn more about their rights to stop debt collection harassment. Others want information about credit counseling and debt settlement alternatives. Clients aged 65 and above are among the fastest growing population of new consumers seeking credit counseling services. Throughout 2003, NCLC has focused on issues related to credit counseling as well.

Unfortunately the strong demand for credit counseling services is often not matched by the quality of the assistance. Honest, reputable agencies are losing out to companies that have moved into the counseling business to make quick money. Incorporated as non-profit organizations, a new breed of counseling firms are operating like for-profit businesses, aggressively advertising on television and the Internet, maintaining close ties to for-profit firms, reaping high revenues, and paying executive salaries that are much higher than average for the non-profit sector. This alarming transformation of the credit counseling industry was documented by the National Consumer Law Center and the Consumer Federation of America in a April 2003 report, **Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants**. The report is available on our web site.

Since the release of the report in April 2003, legislators, state and federal regulators, and the media have increased their scrutiny of the credit counseling industry. NCLC has heard from numerous senior advocates across the country about credit counseling agencies have taken advantage of elder consumers. Policymakers at both the state and national level have contacted NCLC for advice on how best to protect consumers. We will continue to focus on this issue and most important, work to get the word out to elder advocates on how to advise clients whether credit counseling is a good option for them and if so, who to turn to for quality services.

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 August 2003

- The Cost of Credit 2003
- Credit Discrimination 2003
- Consumer Banking and Payments Law 2003
- Consumer Law Pleadings on CD-Rom and Index Guide
- Fair Debt Collection 2003
- Unfair and Deceptive Acts and Practices 2003
- Consumer Class Actions 2003
- Consumer Warranty Law 2003.

In addition, NCLC released a new edition of *Automobile Fraud* 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 2003 issue of Consumer Credit and Usury included articles about rights of Household Finance customers after the Attorney General settlement opt-in period expires. A copy is attached as Appendix C.

New Practice Package

Final versions of our 2003 practice package publication, *Social Insecurity: Understanding Federal Benefit Offsets*, arrived in October 2003. We sent out an order form in the August 2003 mailing and have received nearly 300 requests for complimentary copies to date. The order form is also posted on our web site.

The publication covers the basic rules that protect federal payments as well as the growing trend that allows private creditors, banks, and government creditor rights to seize federal benefits. We also discuss ways in which seniors can protect themselves and retain as much of their federal benefits as possible. A companion CD Rom includes many helpful pleadings and consumer education information. A copy of the publication is enclosed with this report.

Amicus Briefs and Litigation

- Beneficial National Bank v. Anderson (U.S.S.Ct. April 2003). NCLC joined AARP's brief with Consumer Federation of America, National Association of Consumer Advocates and U.S. PIRG arguing that payday lenders should not be permitted to rent a bank in their attempt to use National Banks' exemption from state usury laws.
- Cardegna v. Buckeye Check Cashing (Fla. Sup.Ct. June 2003). This case involved whether the plaintiff in a payday lending case could avoid a mandatory arbitration provision because the contract was void ab initio. NCLC joined in AARP's amicus brief similar to the one in Anderson regarding the need to protect vulnerable consumers from exploitative fringe lending.
- Carmichael v. The Payment Center, Inc. (7th Cir. Aug. 2003). NCLC joined a brief written with AARP arguing that a creditor's Truth in Lending disclosure that the last balloon installment was not properly disclosed when the creditor described it as the balance of the remaining principal and interest rather than as a dollar amount (\$68,749.61).

Administrative Advocacy

NCLC staff work closely on consumer protection issues with a number of federal and state agencies. For example, on April 28, 2003, NCLC submitted comments to the Federal Reserve Board in response to the Board's solicitation for comments on bounce protection products. NCLC does not use AoA funds for legislative work.