

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

**Second Half of the Grant Year
(October 1, 2003 through March 31, 2004)**

**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 October 1, 2003 through March 31, 2004. 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 selected calls is listed below:

- A senior law project attorney in California asked for NCLC's assistance in analyzing damages in a case involving spurious open-end credit. A door-to-door therapeutic bed salesman had signed up an elderly couple for a "credit card" which they then used to pay for the bed. The credit card limit was the price of the bed and there was no prospect that the couple would be able to use the "credit card" again. Unscrupulous salespeople offer these credit cards instead of typical "closed-end" financing in order to avoid the more extensive disclosures required for "closed-end" credit. NCLC provided the attorney with an analysis as to the maximum damages the attorney could recover for his client and regarding possible legal claims.
- A private attorney in California turned to NCLC for assistance in representing an 84 year old woman who was sold a reverse mortgage by Household Financing. The elder woman was suffering from Alzheimer's when she took out the loan. NCLC helped the attorney identify legal claims and referred him to several NCLC publications discussing reverse mortgages.

- A legal services attorney with Bay Area Legal Services in Tampa, Florida called for NCLC's help in determining whether an elder's loan was a high rate loan subject to the Homeownership Equity Protection Act (HOEPA). NCLC helped the attorney analyze the transaction and determined that the loan might be a HOEPA loan if the yield spread premium was included in the calculation. NCLC attorneys also discussed other ways to argue that the loan met the HOEPA triggers.
- A legal services lawyer in Oklahoma called about a 62 year old client who was being harassed by collection agencies over a past student loan. The client was paying \$50/month on the loan until she lost her job. She now suffers from anxiety attacks and is under medical supervision. The student loan collection agency told the client that it could take a third of her income and that she should go back to work to pay off the loan. They also threatened to force her to sell her only car. The client's only income is about \$500/month in Social Security widow's benefits. She is unable to return to work. Despite what the collection agency told her, her benefits are exempt from attachment. This is one of numerous examples of student loan collection agencies giving out false and misleading information to borrowers. NCLC attorneys discussed the relevant law with the Oklahoma lawyer and assisted her in drafting a letter to the Department of Education and to the collection agency. The agency has ceased harassing the client. She is also looking into filing for a disability discharge of her loan.
- A Connecticut attorney called NCLC regarding an elderly client facing foreclosure. Even though the client was ready and able to pay off a balloon note, her mortgage servicer, Fairbanks, would not give her information about the final amount due. In the meantime, the client tried to arrange a more affordable loan, but was unsuccessful. NCLC attorneys discussed a recent class action settlement with Fairbanks that the client could benefit from. NCLC was co-counsel in that case.
- An attorney with New Hampshire Legal Assistance called regarding Social Security's offset of her client's wages. The offset was to recover for a student loan that the client had incurred over twenty-five years ago. NCLC attorneys discussed pending litigation regarding a possible statute of limitations for offset of student loan debt.
- NCLC advised an advocate with a New England community action program regarding an elder client's right to challenge utility bill collection and to avoid termination of services.

Outreach and Dissemination

Social Insecurity Publication

Our August 2003 mailing to about 1,500 elder advocates and legal services program offices included an order form for our new practice package publication, *Social Insecurity: Understanding Federal Benefits.* We have also distributed the publication at various trainings, including at a session on this topic at the 2003 National Aging and Law conference. The response has been overwhelming. A list of the organizations that ordered and received free copies of the publication during this reporting period is attached at Appendix A. Just during this period, a total of 182 organizations from about 40 different states ordered copies. A copy of this publication is enclosed.

Web Site

We continued to expand our web site during this reporting period (www.nclc.org). We added new information to the "Topics of Interest" section of the Seniors Initiative site. The Refund Anticipation Loan brochure, "Don't Pay to Borrow Your Own Money: The Risks and Costs of Tax Refund Anticipation Loans", discussed in greater detail below, was also posted on-line in English, Spanish, Chinese, Korean, Russian and Vietnamese.

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. For example, in February 2004, staff attorney John Rao met with New Hampshire advocates about their elder consumer project.

Advisory Committee

We sent updates of our activities to our advisory committee. The next meeting will be held in April 2004.

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:

- Crystal City, Virginia, October 15-18, 2003. Staff attorney Deanne Loonin led four workshops at the National Aging and Law Conference. The first two workshops, an introduction to consumer law and an advanced session on living trusts, were held during the Nuts and Bolts Day. During the regular conference, Deanne and Amy Mix, a former NCLC attorney, now with AARP, discussed Social Security offsets. Deanne then led a session with Eric Friedman of the Montgomery County Consumer Affairs Office about debt counseling and credit issues for seniors. Tony Rodriguez, staff attorney with NCLC's Washington, D.C. office, led a workshop at the conference on identity theft and Margot Saunders, NCLC's Managing Attorney in Washington, D.C. led a roundtable discussion along with Jim Sugarman of AARP about predatory lending.
- Oakland, California, October 24-27, 2003. NCLC held its annual Consumer Rights Litigation conference. Over 500 advocates attended the conference. In addition to the main conference, NCLC offered two pre-conference sessions. The first, "Getting Started in Consumer Law" introduced basic concepts of consumer law to new practitioners. A second pre-conference sessions, "Saving Homes: Predatory Mortgage Litigation" was intended for intermediate practitioners. We also held a predatory lending strategy update on Monday October 27 as well as a class action symposium on Sunday and Monday. A copy of the conference brochure is attached at Appendix B.

We sent out separate mailings about the conference to elder advocates. In addition, we awarded about \$3500 in full and partial scholarships to elder advocates needing assistance to attend the conference.

- Boston, Massachusetts, October 28, 2003. Staff Attorney John Rao led a session on Mortgage-Driven Chapter 13 cases for the Massachusetts Continuing Legal Education program.
- Washington, D.C., November 3. NCLC, along with Consumer Federation of America, and the drinking water trade associations co-sponsored a Low Income Water Assistance program. The forum was hosted by AARP.

- Seattle, WA, November 12-13, 2003. NCLC's Executive Director Will Ogburn spoke at the NLADA annual conference on predatory lending and consumer law.
- Boston, MA, December 11, 2003. NCLC staff attorney Odette Williamson spoke at a forum, "Living on the Edge: Older Homeowners in Massachusetts." The forum was sponsored by the Gerontology Institute, John W. McCormack Graduate School of Policy Studies, University of Massachusetts Boston and Mass. Legislative Caucus on Older Citizens' Concerns.
- Kansas City, MO, February 21-22, 2004. NCLC and the National Association of Consumer Advocates sponsored a fair debt collection practices training conference. About 100 attorneys attended the session.
- 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 Austin, Texas on Dec. 10-11, 2003 and in Albuquerque, NM, on March 12-13, 2004. About 50 lawyers attended the Texas training and about 50 lawyers and 30 other advocates participated in New Mexico.

In addition, during this time period, staff attorney Deanne Loonin continued to participate as an advisory committee planning member for the National Aging and Law Conference, to be held in Crystal City, Virginia in October 2004.

Substantive Issues: Focus on Water Affordability

While low-income households can turn to a range of federal, state and local assistance from established low-income utility assistance programs to help pay their home energy bills and local phone bills, there is a vast unmet need when it comes to making their water and sewer bills affordable. Seniors on fixed incomes are vulnerable to increased water and sewer rates and some seniors on medications such as chemotherapy and steroids for arthritis are more vulnerable to contaminants in water.

A number of factors threaten to drive up the cost of residential water bills. The Congressional Budget Office estimates that the nation's aged and crumbling water infrastructure will cost about \$26 billion to \$43 billion annually over the next twenty years to replace and repair. This estimate is consistent with the U.S. EPA estimates. Water industry estimates are even higher. Another factor driving up water costs is the cost to comply with water quality regulations which may require expensive new infrastructure or treatment technologies accompanied by increased operations and maintenance costs. Some regions of the country are also coping with water scarcity or diminishing number of customers. NCLC has been active in raising awareness about the issue and bringing groups together to work proactively to address the problem.

New Publications

NCLC Manuals

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 2003:

- Repossessions and Foreclosures
- Student Loan Law
- Consumer Bankruptcy Law
- Fair Credit Reporting
- Access to Utility Services

In addition, NCLC released new editions of *Consumer Arbitration Agreements* and *Truth in Lending* and a new Consumer Law in a Box CD-Rom.

NCLC Reports

Issues of NCLC's newsletter, *NCLC Reports* contained numerous articles of interest to senior advocates. For example, the January/February 2004 issue of Bankruptcy and Foreclosures included a summary of the recent class settlement with Fairbanks Capital. This case involves challenges to Fairbanks' abusive mortgage servicing practices. Fairbanks entered into a global settlement, with a private agreement and a Federal Trade Commission order negotiated contemporaneously and cooperatively. NCLC was co-counsel in the private litigation. A copy of this article is attached as Appendix C.

Refund Anticipation Loan (RAL) Report

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." Among other findings, we reported 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. A copy of the press release is attached as Appendix D.

Consumer Education Brochure

NCLC released a new consumer education brochure, "Don't Pay to Borrow Your Own Money: The Risks and Costs of Tax Refund Anticipation Loans." Refund anticipation loans (RALs) are high cost, high risk loans secured by a taxpayer's expected tax refund. Any senior receiving a tax refund is at risk, especially low-income seniors

struggling to pay commercial preparers since RALs are often promoted as a way of avoiding up-front tax preparation fees. Most at risk are wage-earning seniors who are raising children or grandchildren and received the Earned Income Tax Credit. These taxpayers have the largest refunds and are most often RAL recipients.

This brochure is available in English, Spanish, Chinese, Korean, Russian and Vietnamese. Copies of the English version along with a new brochure order form will be sent out to our elder advocate mailing list this summer as part of our annual mailing. In the meantime, copies are available by ordering from NCLC or by downloading from NCLC's web site. Copies of these brochures are enclosed.

We have also distributed the brochure to numerous low-income tax preparation sites and at relevant trainings. For example, in Massachusetts, NCLC organized a press conference in February 2004 highlighting the dangers of RALs, which featured statements by MA Commissions of Banks Steven L. Antonakes, Office of Consumer Affairs Director Beth Lindstrom, and Department of Revenue Commissioner Alan LeBovidge, as well as a consumer victim. NCLC also worked closely with the Boston Earned Income Tax Coalition, which provides free tax preparation services to low-income Bostonians. NCLC developed an anti-RAL consumer education brochure entitled "Don't Pay to Borrower Your Own Money". Over 1500 copies of the RAL brochure were distributed to the Boston EITC Coalition tax preparation sites, and NCLC also provided other consumer education materials to be distributed as part of the Coalition's financial literacy efforts. An NCLC staff attorney attended and provided RAL brochures and other consumer education materials at an EITC kickoff event at Roxbury Resource Center in January 2004.

Administrative Advocacy

NCLC staff work closely on consumer protection issues with a number of federal and state agencies. For example, in January 2004, NCLC along with National Association of Consumer Advocates, CFA, National Community Reinvestment Coalition, the Woodstock Institute, and U.S. Public Interest Research Group, on January 30, 2004 filed comments on proposed revisions to Regulations B, E, M, Z, DD and the Official Staff Commentaries. These comments related to Federal Reserve Board's proposals to amend the "clear and conspicuous" standards for disclosures.

On October, 6, 2003, NCLC, CFA, NACA, and U.S. PIRG sent comments to Office of Comptroller of the Currency in response to three suggested new regulations to expand the authority of national banks. These proposed delegations relate to real estate lending, lending not involving a security interest in real property, and deposit taking.