

# Outlook

Fall 2003  
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www.nclc.org

NATIONAL CONSUMER LAW CENTER

Protecting  
Vulnerable  
Consumers  
and  
Promoting  
Marketplace  
Justice

NATIONAL  
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CENTER



## Inside Outlook

Fall 2003

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## Symposium Takes Aim at Predatory Lending

Over 90 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.

"Despite the abundance of loan-related information from affected consumers and a growing body of research, large gaps remain in our understanding of the numbers and characteristics of people affected by predatory loans," said Odette Williamson, an NCLC attorney. "We need more raw data to understand the true relationship between the high rates and fees paid by consumers and the risks borne by lenders," said Williamson.

In addition to establishing a clear roadmap for future research on predatory lending, the Symposium fostered new thinking and approaches. Participants noted the interdisciplinary nature of the Symposium, and the "sustained, focused discussion among many different experts." (continued on page 8)



Symposium participants included (L to R): Ruhi Maker, Public Interest Law Office; David Berenbaum, National Community Reinvestment Coalition; Allen Fishbein, Center for Community Change; and Ira Goldstein, The Reinvestment Fund.

## NCLC Fights Refund Seizures

When tax time rolls around, more and more Americans have come to rely on receiving a refund check from Uncle Sam. This is especially true for recipients of the federal earned income tax credit, the program that fights poverty by giving a financial boost to low-income workers.

Like many people expecting a refund, Canieva Hood needed the money urgently and asked a commercial tax preparation chain, Jackson Hewitt, to prepare her return. Jackson Hewitt promised her an expedited refund but neglected to explain it would

come through a tax refund anticipation loan, in which the consumer pays steep interest charges and fees for the privilege of getting his refund a few days early. After signing the papers, Hood waited expectantly for her over \$2,000 refund. It never arrived.

To Hood's bewilderment, her refund had been seized by Santa Barbara Bank & Trust, the lender partnered with Jackson Hewitt to make refund anticipation loans. Based on a clause buried in the loan documents, Santa Barbara Bank & Trust claimed the right to (continued on page 8)

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### Outlook

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Dear Friends:

As you look over this issue of OUTLOOK you'll see that NCLC continues to be active on a variety of concerns. Predatory lending, for instance, is not a new issue, but the recent national Symposium NCLC helped to organize is leading to important shared research efforts and understanding of the industry and its customers. On other fronts, we're litigating against tax refund seizures. Our report on military scams has brought national concern to the financial abuses our military personnel are exposed to. We've testified before Congress and submitted comments to the US Department of Education on student loan issues. Our joint report on credit counseling received widespread attention and encouraged a variety of efforts now underway to correct some of the problems. Although we work on many more issues than those reported on in this issue of OUTLOOK, you can see our concerns are many and our approaches are varied.

Each of you who makes a financial donation to NCLC has contributed to this advocacy. It's no exaggeration to say we couldn't do it without your gifts.

Our agenda is important and we need to continue - better yet, increase - our advocacy, but for the first time in years I fear some difficult choices may lie ahead. NCLC's income is down this year. Grants and contracts, publications, donations - all our major revenue sources are below budget. We always strive to stretch our income as far as possible, but we can't stretch what we don't have. Some crucial advocacy may be at risk. We're one of the few voices speaking on behalf of low-income consumers and I'm very concerned at the prospect of a cutback in advocacy. I urge you to help by making as large a donation as you can to NCLC. Use the coupon below and send us a check, charge, or pledge - whatever you can afford.

Thank you,  
Willard P. Ogburn  
Executive Director

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# Casey Grant Helps Fight Tax Refund Loans

The Annie E. Casey Foundation has awarded the Center a \$50,000 grant to fight the growing menace of tax refund anticipation loans. The grant was made as part of Casey's program to combat predatory financial practices that target low-income families and perpetuate a cycle of poverty and hopelessness.

"Refund anticipation loans are undermining longstanding efforts to build assets and wealth in low-income communities," said Chi Chi Wu, the Center's expert on RAL issues who will direct work under the grant. "Unfortunately, most consumers don't realize that RALs are extremely expensive," said Wu.

dollars in public funds are being diverted away from asset development and anti-poverty benefits into the pockets of major tax preparation companies and large banks," said Wu.

RALs are growing at an alarming rate. Approximately 12.1 million RALs were taken out during the 2001 tax-filing season, up 12 percent from the year before. According to the IRS, approximately 40 percent of RAL consumers, or 4.32 million people, are working poor families who receive the EITC.

The growth of RALs reflects an industry marketing strategy that exploits the financial

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"...millions of dollars in public funds are being diverted away from asset development and anti-poverty benefits into the pockets of major tax preparation companies and large banks."

- Chi Chi Wu, NCLC staff attorney

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RALs, which advance cash against the borrower's expected income tax refund, are mostly sold by tax preparers like H&R Block, but are also being offered by used car dealers and furniture companies.

It is common to see triple digit interest rates, ranging from 67 to 776 percent APR (the APRs are even higher if you include the e-filing fee, with the equivalent rates of 97 percent to 2000 percent). Most insidious, these loans are often pushed onto low-income wage earners entitled to the federal earned income tax credit.

"It's scandalous that millions of

vulnerability of low to moderate-income families who are struggling to make ends meet. Many customers are misled into thinking of RALs as "quick refunds," not understanding that they are very expensive loans. (See OUTLOOK cover story on lawsuit.)

Thanks to Casey Foundation funding, the Center will work with local advocacy groups nationwide to warn policymakers and consumers about the dangers of RALs. NCLC will also shine the spotlight of public and media attention on the issue and raise awareness of more affordable alternative loan products.

# NCLC Active in Protecting Students in Debt

NCLC has been playing an active role in recent policy debates that affect low-income student loan recipients, thanks in part to funding from the Mifflin Memorial Fund. Last February, for example, NCLC responded to a request from the U.S. Department of Education regarding amendments to the federal Higher Education Act. Focusing on issues related to postsecondary proprietary and vocational schools, NCLC submitted detailed comments that urged the Department to strengthen and aggressively enforce consumer protections for low-income students. Other suggestions included intensifying efforts to work with borrowers prior to default and providing more flexible repayment options.

## Collection Abuses

In June, attorney Deanne Loonin was invited by a Congressional committee to testify on the Debt Collection Improvement Act of 1996 and student loans. Her testimony documented rampant abusive practices used by private collectors of student loan debts. "Since the advent of privatization we've seen the worst kinds of debt collection tactics," said Loonin. "They often overcharge for collection fees and browbeat consumers into unaffordable payment plans," she said.

As a result of Loonin's testimony, both the Congressional committee and the Department of Education requested that NCLC keep them informed of student loan collection abuses. NCLC has already passed on

numerous complaints and is in the process of compiling others. Advocates are encouraged to contact Loonin at NCLC ([dloonin@nclc.org](mailto:dloonin@nclc.org)) with additional case examples.

## Wage Garnishment Limits

NCLC also submitted comments on the Department's plans to increase the administrative wage garnishment limit from 10 to 15 percent. Although the Department recently announced that it was going ahead with these plans, it did accept some of NCLC's suggestions to ensure greater protection for consumers. It is still unclear whether the Department has the authority to begin garnishing under the Debt Collection Improvement Act.

## Social Security Offsets

Finally, NCLC's litigation on Social Security offsets to collect old student loans recently received a major boost. In July, another federal district court affirmed the decision reached in litigation brought by NCLC and Public Citizen Litigation Group that there should be a ten-year limit on the government's ability to seize federal benefits to collect student loans. The case, *Lee v. Paige*, was brought by Legal Aid of Western Missouri.

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# 2 Sandler Grants Support Advocacy and Provide Matching Opportunity

For the second year in a row, the Sandler Family Supporting Foundation has awarded the Center a \$200,000 grant for general support.

"In these tight financial times we are especially grateful for this wonderful award and the flexibility it provides," said Willard P. Ogburn, NCLC executive director. "It will boost our capacity to safeguard consumer rights wherever they

are most in jeopardy," said Ogburn.

## Challenge Grant

Ogburn also announced that the Sandler Foundation has issued a challenge grant to NCLC, similar to the challenge they issued (and was met by) the Center last year.

The Foundation will make a 50 percent match on any portion of a donation to NCLC that is

\$5,000 or more greater than the donor's largest previous grant [or at least \$5,000 from any new donor]. According to the terms of the challenge, NCLC can raise up to \$200,000 toward the match and the Foundation will give the Center up to an additional \$100,000.

If payments are not immediately available, we invite short-term pledges. Court awards directed to the Center with the

explicit intent of being matched, offer another opportunity for participation.

NCLC's deadline for completing the challenge is June, 2004.

"We're delighted that the Sandler Foundation has once again offered this chance to multiply the impact of our donors' contributions," said Ogburn. "We hope the Sandler's generosity on behalf of consumer justice will be a model for others," he said.

For information on participating in the challenge, contact Ogburn at 617 542-8010.

## New Partners Aid Fundraising Council

Six new members have joined NCLC's Partners' Council according to Chairman Bryan Kemnitzer, of Kemnitzer, Anderson, Barron & Ogilvie, San Francisco, Calif.

"NCLC faces many financial challenges in the year ahead and we welcome the help of these new members, each of whom brings stellar credentials to the Council and its fundraising efforts," said Kemnitzer. "We'll rely on their assistance in fundraising for the upcoming building campaign, as well as for our annual advocacy support."

New to Partners:

**Howard D. Rothbloom**, Marietta, Ga., successfully represented plaintiffs in two class action settlements valued at \$13.5 million on single premium credit life insurance, and is credited with driving single premium credit life insur-

ance out of the mainstream.

**Tim Eble** of Mount Pleasant, S.C., is a frequent sponsor of NCLC Class Action Symposiums. Recent class settlements include a case against First USA Bank alleging its failure to honor interest rates promised in its solicitations and another alleging violations of the Telephone Consumer Protection Act against Lobel Financial.

**Michael D. Donovan**, Donovan Searles, LLC, Philadelphia, Pa., specializes in securities and consumer class actions. In a precedent-setting case against Fleet Bank a federal appeals court ruled that customers may sue in federal court banks that change the terms of their agreements.

**Sheila Canavan**, Moab, Utah, worked at NCLC years ago as a young law school graduate and intern in our office. Even more notable are recent victories against

First Alliance Mortgage Company in one of the largest settlements for consumers to date and as co-counsel in litigation against Lehman Brothers for aiding and abetting First Alliance's fraud.

**Roy Barnes**, Barnes Law Group, Marietta, Ga., received national attention in the early 1990s in a predatory lending case against Fleet Finance. When governor of Georgia he signed into law one of the country's strongest anti-predatory lending laws.

**Robert S. Green**, Green & Jigarjian, San Francisco, Calif., has extensive experience representing consumers in telecommunications, telemarketing, and credit card litigation cases.

Also on the Partners' Council are: **Bernard E. Brown**, The Brown Law Firm, Kansas City, Mo.; **James L. Brown**, Wauwatosa, Wis.;

**Mark A. Chavez**, Chavez & Gertler, Mill Valley, Calif.; **William H. Crowder**, Crowder & Bedor, St. Paul, Minn.; **Cary L. Flitter**, Lundy, Flitter, Beldecos & Berger, Narberth, Pa.; and **Richard S. Gordon**, Quinn, Gordon, Wolf, LLP, Towson, Md.

In addition: **Aurora Dawn Harris**, The Harris Law Firm, Orange, Calif.; **Kathleen E. Keest**, Iowa Department of Justice, Des Moines, Iowa; **William M. Krieg**, Fresno, Calif.; **Robert I. Lax**, New York, NY; and **Michael P. Malakoff**, Malakoff Doyle & Finberg, PC, Pittsburgh, Pa.

Also: **C. Knox McLaney, III**, Montgomery, Ala.; **John T. Murray**, Murray & Murray, Sandusky, Ohio; **John Roddy**, Grant & Roddy, Boston, Mass.; and **James C. Sturdevant**, The Sturdevant Law Firm, San Francisco, Calif.

# CREDIT COUNSELING

**“Well-intentioned debtors turn to these agencies for help in paying off debt and instead, when they most need sound advice and counsel, find themselves gouged and misled.”**

*Deanne Loonin, NCLC staff attorney*

“Credit Counseling in Crisis”, a joint effort of NCLC and Consumer Federation of America, exposes the risks debt-burdened consumers face from an unscrupulous new-breed of credit-counseling agencies. “Well-intentioned debtors turn to these agencies for help in paying off debt and instead, when they most need sound advice and counsel, find themselves gouged and misled,” said Deanne Loonin, NCLC staff attorney.

Although legitimate organizations exist, an increasing number of credit-counseling agencies provide improper advice, engage in deceptive practices, charge excessive fees, and abuse their non-profit status.

The public’s response to this enlightening report has been swift and efforts at reform have begun. The U.S. Senate is considering holding congressional hearings on this issue in the fall. A number of key federal agencies claim to be increasing their scrutiny of credit counseling agencies. Maryland has passed a new credit counseling law that is pro-consumer and other states have contacted NCLC about similar legislation. Attorneys general in several states have filed suit against credit counseling or debt settlement companies and many others are considering legal action.

Typically, the offending agencies may not make timely payments to creditors, may fail to adequately disclose their fees, or may not reveal that their fees are voluntary. Consumers are frequently pressured by credit counseling agencies to enroll in Debt Management Programs for

which they may be charged large fees of up to hundreds of dollars. DMPs are often not in the consumers’ best interests and may not adequately assist them in resolving their debts.

Moreover, some “non-profit” agencies act like profit-making businesses by aggressively advertising and selling DMPs, reaping high revenues, and paying executives salaries that are normally unheard of in the non-profit sector. At the same time, consumer-friendly services, including budget counseling and community education, have been curtailed or even eliminated by many credit counseling agencies.

Credit card issuers have contributed to this growing problem. Traditionally, credit card issuers paid agencies 15 percent of the debt they recovered from borrowers in DMPs. At present, the average rate of contribution is less than 8 percent. Furthermore, most creditors are unwilling to negotiate reduced interest rates for consumers who have entered into DMPs. As a result, more consumers are forced to drop out of credit counseling and declare bankruptcy.

The full text of “Credit Counseling in Crisis” is available at NCLC’s website, [www.consumerlaw.org](http://www.consumerlaw.org).

## 7 Reasons to Reject a Credit Counseling Agency

- 1 **High Fees** – the set up fee for a DMP is more than \$50 and monthly fees are more than \$25
- 2 **“Voluntary” Fees that Aren’t So Voluntary** – voluntary fee information is not passed on to you or you are pressured to pay more than you can afford
- 3 **The Hard Sell** – agency employees aggressively push debt “savings” or a future “consolidation” loan
- 4 **Employees Paid by Commission** – an employee receiving commission for placing you in a DMP is more likely to focus on his own wallet rather than yours
- 5 **It Flunks the “Twenty Minute” Test** – any agency that offers a DMP in less than 20 minutes has not spent enough time looking at your finances
- 6 **One Size Fits All** – an agency fails to offer educational options, such as classes or budget counseling, in addition to DMPs
- 7 **Aggressive Ads** – some agencies are being investigated or sued for deceptive practice. Find out if an agency has been the subject of complaints before making a decision

# Consumer Education for Advocates

As the nation's only consumer law resource center, attorneys, policymakers, low-income advocates, and social service providers rely on us for up-to-date workshops and education on pressing consumer issues. In 2003 we are once again traveling across America to participate in numerous trainings, special conferences, and seminars. Look below for a session coming to a location near you.

September 24-25, Indianapolis.	Predatory Mortgage Lending
September 25, Lansing, Mich.	Consumer Law Day with Michigan Poverty Law Program
October 15-18, Crystal City, Va.	National Aging & Law Conference
October 24-27, Oakland	Consumer Rights Litigation Conference
November 12-18, Seattle	National Legal Aid and Defender Association Annual Conference
December 10-11, Austin, Tex.	Predatory Mortgage Lending

See [www.consumerlaw.org](http://www.consumerlaw.org) for more information on these and other trainings.

## Court Files Amicus Briefs

The Center's attorneys are highly respected for the breadth and depth of their expertise in consumer law and public policy. As a result, NCLC is often invited to submit amicus briefs in litigation of significance to low-income consumers. We have recently filed briefs in the following cases:

In a case before the U.S. Supreme Court, *Kontrick v. Ryan*, NCLC acted as counsel to amicus National Association of Consumer Bankruptcy Attorneys. The Court was considering whether bankruptcy courts had discretion to extend time deadlines for creditor challenges to a debtor's right to a discharge. Citing the plain language of the bankruptcy rules, as well as important public policy considerations, NCLC urged the Court to rule that discharge objections must be filed by a specified deadline.

NCLC joined an amicus brief

submitted by AARP in *Cardagna v. Buckeye Check Cashing*. The plaintiff sought to avoid a contract's mandatory arbitration provision on the grounds that the contract was void from its inception. The brief focused on the importance of protecting vulnerable consumers from exploitative fringe lending.

In *Beneficial National Bank v. Anderson*, NCLC joined AARP's brief, arguing that payday lenders should not be permitted to "rent" a bank charter in their attempt to benefit from national banks' exemption from state usury laws. Also joining the brief were Consumer Federation of America, the National Association of Consumer Advocates, and U.S. Public Interest Research Group. The U.S. Supreme Court ultimately ruled in favor of the bank in this case, holding that the National Bank Act preempts state usury claims for national banks.

## Helping Domestic Violence Survivors: A New Resource for Advocates

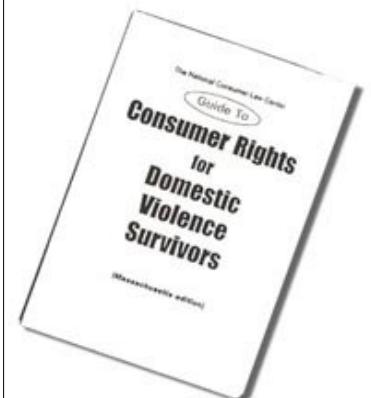
With the help of a new handbook from the Center, advocates and shelter workers will be better equipped to help domestic violence survivors gain control over their finances. The *NCLC Guide to Consumer Rights for Domestic Violence Survivors (Massachusetts edition)* covers the most critical consumer issues faced by low-income survivors of domestic violence.

It explains how survivors can get back on their feet by developing effective budgets, avoiding common scams, and building solid credit records. It also describes ways to fight back when faced with identity theft by the abuser, debt collection harassment, used-car fraud, and unsavory child support collection agencies.

The book was written and published thanks to grants from the George H. and Jane

A. Mifflin Memorial Fund and the John H. and H. Naomi Tomfohrde Foundation.

Written by staff attorneys Chi Chi Wu (principal author) and Deanne Loonin (contributing author), the guide closes significant gaps in available information for domestic violence advocates. It was developed as part of the Center's initiative to help survivors enforce their consumer rights, identify available resources, get out of financial difficulty, and ultimately achieve economic independence.



# Cy Pres Awards Support Advocacy

**Thanks to the efforts of attorneys across the country, NCLC receives court-awarded cy pres funds for the benefit of consumers who are victimized in the marketplace.**

Despite increasingly fierce opposition from industry defendants, consumer attorneys are successfully recommending NCLC as an appropriate recipient of cy pres awards in consumer class actions.

Cy pres have enabled the Center to engage in a whole series of advocacy projects fighting pernicious scams, defending fundamental

consumer protection laws, and pushing for curbs on exploitative industry practices.

We extend special thanks and appreciation to the following people who have recently directed cy pres funds to the Center:

Daniel S. Blinn  
O. Randolph Bragg  
Stephen R. Felson  
Phil Goldsmith  
Coleman Herman

Bryan Kemnitzer  
Andrew S. Kierstead  
Michael D. Kinkley  
Robert W. Murphy  
David J. Philipps  
Joseph W. Phebus  
Lance A. Raphael  
Matthew K. Rossman  
Howard D. Rothbloom  
Cecil Strange

For information on fashioning an award for NCLC, contact Robert Hobbs or Rich DuBois at 617 542-8010.

# Military Scams: In Harms Way

At a time when America's soldiers are putting their lives on the line overseas, NCLC's report "In Harm's Way – At Home" exposes a wide array of scams targeting military personnel and veterans. Businesses surround every military base offering financial services that have far higher costs than are widely available elsewhere to consumers. These businesses include predatory lenders, check cashers, high-cost car dealers, overpriced insurance sales, car title lenders, pawn shops, and more.

Our report and the media attention it attracted have been a catalyst for action. Military leaders have rallied against the predatory businesses ringing their bases. JAG officials have circulated the report worldwide and NCLC is assisting in training JAG lawyers in defending against scam businesses. Some base commanders have expanded their off-limits designation of scam businesses and many more are exploring this option. Action by state



and federal lawmakers has been prompted by the report as well. "In Harm's Way – At Home" was injected into the North Carolina legislature's raging debate over reinstating payday lending although the bill never came to a vote before the legislature adjourned for the year. The U.S. Senate also passed a bill explicitly banning veterans' benefits buyout deals and some are seeking House action this year.

The majority of military personnel are financially inexperienced, often with young children to support and

Targeting America's Military and Veterans

struggling to stay afloat from one paycheck to another. Periods of deployment, like for the recent war in Iraq, are times of particular financial hardship for military families. Military conduct codes, however, stress the need for orderly personal lives, including orderly finances.

"The military's an especially ripe target," says NCLC's Steve Tripoli, the report's principal author. "Many service people are low-income – the economic group most targeted by these predators – but they're far more attractive prey than most low-income families for many

reasons." Scam businesses are drawn to military personnel because they have a steady stream of secure income, are not subject to lay-offs, and are easy to track.

Predators use a wide range of techniques to bring military personnel through their doors. They place ads in newspapers that appear to be official military publications, use military-sounding names, military symbols, and ex-military salespeople to lure in and gain the trust of service personnel.

Veterans are also lured in by an expensive scam in which their military benefits or pensions are purchased for a lump sum. Not only are the interest rates associated with these lump sum buy-outs usurious, NCLC lawyers say that any such purchase of veterans' benefits is illegal under a federal law prohibiting assignment of those benefits.

The full text of "In Harm's Way – At Home" is available at [www.consumerlaw.org](http://www.consumerlaw.org)

# Bank Seizes Tax Refund to Pay Back Alleged Debt

(continued from page 1)  
take Hood's refund to pay back any debts allegedly owed, not only to Santa Barbara Bank & Trust itself, but also to any lender that made refund anticipation loans. As it turned out, Hood's refund was seized to pay back an alleged 7-year-old debt to Household Bank.

"I was counting on my tax refund to pay my rent and bills," said Hood, who supports her two children and mother in Los Angeles. "I didn't know that Santa Barbara Bank & Trust could take it to repay an old debt owed to someone else. I am still struggling financially because of the loss of my refund," she said.

Hood and the Congress for California Seniors, an advocacy organization of elderly consumers in California, have since filed a class action lawsuit on behalf of California consumers who similarly had their tax refunds seized. The suit

**"I am still struggling financially because of the loss of my refund"**

- Canieva Hood

alleges that Santa Barbara Bank & Trust's seizure of her tax refund and the bank's imposition of the clause permitting debt collection was unfair, unconscionable, and in violation of California's debt collection laws. NCLC is serving as co-counsel in the

lawsuit with attorneys James Sturdevant and Monique Oliver of the Sturdevant Law Firm in San Francisco.

Santa Barbara Bank & Trust is one of a handful of banks nationwide that make refund anticipation loans through tax preparers. The industry targets customers among the working poor who receive the earned income tax credit. Typical fees range from about \$30 to \$100, with effective annualized interest rates ranging anywhere from about 60 to over 700 percent. As documented in two recent reports by NCLC and the Consumer Federation of America, refund anticipation loans are needlessly draining hundreds of millions of dollars from the assets of low-income

families.

"We joined in this lawsuit on behalf of Ms. Hood because this cross-lender debt collection imposes a significant hardship on consumers who get caught in this particular trap," said Chi Chi Wu, an attorney with the Center and one of the co-authors of NCLC's reports on RALs.

"We are especially concerned about the effect of Santa Barbara Bank & Trust's debt collection on the millions of hard-working taxpayers who receive the earned income tax credit like Ms. Hood, and need every penny of that money to support their families," said Wu.

## Predatory Lending Symposium

(continued from page 1)  
In particular, researchers appreciated receiving valuable information and fresh perspectives from attorneys who represent victims of predatory lending in litigation. Noted one participant, "[i]n terms of focus, organization, interdisciplinary mix, and direct relevance to fast-changing events, this Symposium was the very best conference I've ever seen."

The Symposium gathered a diverse group of researchers, academics, selected lenders and secondary market representatives, attorneys, consumer and housing advocates, and government officials. Participants hailed from a number of institutions, including the Kennedy School at Harvard University, Freddie Mac, the Federal Reserve, Consumer Federation of America, the

Wharton School at the University of Pennsylvania, the National Community Reinvestment Coalition, the University of Connecticut School of Law, and Stanford Law School.

The sessions highlighted issues critical to understanding the nature of predatory lending, including securitization, risk-based pricing, the effect of consumer education programs, and consumer use of the small loan industry. Funding for the Symposium was provided by grants from the Annie E. Casey Foundation, the Fannie Mae Foundation, and the Ford Foundation.

"We think the Symposium has helped to instill a sense of common purpose and direction in the fight against this destructive industry," commented Elizabeth Renuart, director of the Center's Stop

Predatory Lending Initiative. "It's already contributed a number of fresh ideas that will bolster our long-term campaign to reform public policies on predatory lending," said Renuart.

For example, *The Housing Policy Debate*, a journal of the Fannie Mae Foundation, has agreed to

publish ten research and policy papers next year in a special Symposium issue. In another development prompted by the Symposium, a new list serve has been set up for researchers, academics, attorneys and advocates to facilitate communication and coordination among people interested in research on predatory lending.



Television reporter Shannon O'Brien interviews NCLC's John Howat for a story on utility deregulation in Massachusetts and the impact of volatile utility prices on low-income consumers.



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# CONSUMER RIGHTS LITIGATION CONFERENCE

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October 26-27

**Class Action Symposium**

October 27

**Predatory Lending Strategy Update**

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**Bill Lockyer, Calif. Attorney General**

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trial practice, credit counseling, furnisher liability,  
credit reporting, credit discrimination, mortgage  
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to interest you.

## Register today!

Download a brochure and registration forms  
from our website, [www.NCLC.org](http://www.NCLC.org) or  
call 617 542-8010 and we'll fax you a copy.

## Class Action Symposium

The 3rd Annual Consumer Class Action Symposium will be held  
Sunday night, October 26th, immediately following the Consumer  
Rights Litigation Conference, and during the day on October 27th,  
in Oakland, Calif. The Sunday evening event will feature a  
keynote address by reknowned class action lawyer and trial  
strategist Joseph W. Cotchett. The program on Monday will cover  
such cutting edge, current consumer class action topics as:

- \*Class Actions in UDAP and Representative Capacity Claims
- \*Coordination of Multiple Cases—Competing State and/or  
Federal Class Actions
- \*Can Private Consumer Class Actions Co-exist with Govern-  
ment Enforcement Actions?
- \*The Care and Feeding of the Class Representative: Finding  
the Right Plaintiff and Adequately Representing Them in  
Consumer Class Actions
- \*Arbitrating Consumer Class Actions - Choice of Law Issues
- \*Class Action Reform Legislation/Rules Changes
- \* Key Issues in Class Action Settlements and Attorneys Fees  
Awards

Our expert presenters tentatively scheduled to appear include  
such nationally respected class action attorneys as Bill Lan Lee,  
Seth Lesser, Janet Varnell, Arthur Bryant and Brad Seligman.  
Useful course materials will be provided on a CD-ROM.

## NCLC List Serves

Email list serves are valuable resources for practicing attorneys  
who benefit from the shared interests, experiences and  
expertise of their colleagues. NCLC sponsors a number of  
email groups for those representing consumer interests.  
(These groups are not open to those who represent the industry  
that is the topic of the group or other adverse parties.) For  
information on a particular group email the contact listed.

**Auto Fraud** (Contact: Jon Sheldon)

To join: [owner-autofraud@lists.nclc.org](mailto:owner-autofraud@lists.nclc.org)

**FCRA-Fair Credit Reporting Act** (Contact: Tony  
Rodriguez)

To join: [arodriguez@nclc.org](mailto:arodriguez@nclc.org)

**EBT-Electronic Benefits Transfer** (Contact: Chi Chi Wu)

To join: [cwu@nclc.org](mailto:cwu@nclc.org)

**Mobile Homes** (Contact: Odette Williamson)

To join: [mobilehome-request@lists.nclc.org](mailto:mobilehome-request@lists.nclc.org)

**Student Loans** (Contact: Deanne Loonin)

To join: [studentloan-request@lists.nclc.org](mailto:studentloan-request@lists.nclc.org)

**Energy and Utility Issues** (Contact: John Howat)

To join: [jhowat@nclc.org](mailto:jhowat@nclc.org)

Information about other list serves is available from the  
National Association of Consumer Advocates at  
[Phyllis@naca.net](mailto:Phyllis@naca.net)

# Interview: Rodriguez at Work

OUTLOOK recently interviewed Tony Rodriguez, an attorney in NCLC's Washington office. Before joining the Center early last year, Rodriguez was a Massachusetts assistant attorney general concentrating on consumer protection and civil rights issues, and was director of its Disability Rights Project. He has also worked at the San Fernando Valley Neighborhood Legal Services office in Pacoima, Calif. as a staff attorney and housing unit coordinator.

**Q**uestion: What issues or projects have you been concentrating on at NCLC?

**A**nswer: Most recently, the supplement to the *Fair Credit Reporting* manual. It's in production and there are always lots of last minute details and changes. Preemption of state fair credit reporting laws and each state's ability to establish its own standards are issues I've been working on. The Fair Credit Reporting Act's preemption of many state regulations is scheduled to sunset at the end of this year. Congress, however, is considering an extension of the preemption provisions in the FCRA - and, unfortunately, is likely to extend it in one form or another

**Q**uestion: The administration and the credit reporting industry favor a permanent extension of the FCRA's state law preemption. What's NCLC's position?

**A**nswer: We [NCLC's Margot Saunders and Rodriguez] have been working with other consumer and privacy groups - the Consumer Federation of America,

Consumers Union, U.S. PIRG, Privacy Times, and others - to stop efforts to renew preemption provisions in the FCRA. The states play an important role in protecting consumers and we don't think the federal government should weaken that role. In general, however, members of Congress seem to believe there should be national standards for the credit reporting industry, although they appear to have concerns about accuracy and privacy as well.

We're addressing these issues with several consumer -friendly amendments to the FCRA that would increase accuracy standards for credit reports, increase consumer access to information maintained by creditors and credit reporting agencies, and heighten accountability and penalties for entities that fail to provide or maintain correct and complete information in consumer credit files.

We think furnisher issues are especially critical and want to ensure that they properly reinvestigate consumer disputes. We also believe consumers should have the right to obtain injunctive and declaratory relief if a credit reporting agency or furnisher of credit information to a credit reporting agency refuses to delete inaccurate or incomplete information in their credit files. It remains to be seen whether Congress will follow through with significant consumer protection provisions on these issues.

**Q**uestion: Are there any new projects or consumer issues of particular interest to you?

**A**nswer: NCLC has a tradition of reaching out to vulnerable consumer groups and there are ongoing efforts to



Tony Rodriguez

expand the resources available to groups such as the elderly, immigrants, domestic violence survivors, those with student loans, low-income property owners, military personnel, and others. I'd like to add to that list Native American communities and persons with disabilities.

We're beginning the process of reaching out to advocates in the Native American community, exploring consumer issues that pose special problems for Native Americans, and offering our assistance. We already know the great harm that predatory lenders cause to Native Americans, but are looking at other problems unique to Native Americans. For example, we're concerned with proposals to take land that tribes hold in trust and make such land available as security

interest for loans and other consumer transactions.

We are also interested in assisting tribes with drafting consumer protection provisions in tribal codes. Only a handful of tribes currently have consumer protection provisions in their tribal laws.

I also advocate use of consumer protection laws, particularly Unfair and Deceptive Acts and Practices laws, to protect individuals with disabilities. We've compiled a list of state warranty laws that cover assisted technical devices such as wheel chairs, scooters, lifts, Braille printers, and voice recognition software that we anticipate including in a new section on assistive technology lemon laws in our manual *Consumer Warranty Law*.

**Q**uestion: What other issues do you expect to be working on in the near future?

**A**nswer: Risk-based pricing - where rates or prices go up based on an individual's credit score - is being used by more and more businesses for products or services seemingly unrelated to credit risk, access to utilities, for example. Since credit plays such a huge role in our marketplace we think consumers should be fully informed about credit reports, credit scores, and how credit information can affect whether consumers obtain products and services - and at what price. Identity theft protection is another issue, depending on what changes Congress makes to the FCRA. Credit reporting accuracy and the ability to access and correct such information will remain issues.

## Advocating for LIHEAP Benefits

NCLC recently urged members of the House Appropriations Subcommittee on Labor, Health and Human Services and Education to support funding for the Low Income Home Energy Assistance Program, which helps families afford their heating and cooling bills. In light of LIHEAP's success in helping low-income families maintain access to vital energy service, NCLC recommended that the subcommittee appropriate, at a minimum, \$3.4 billion for the regular LIHEAP program in fiscal year 2004 as well as advance appropriations for fiscal year 2005 of at least \$3.4 billion for the regular program.

"LIHEAP funding is more critical than ever because the rise in energy prices shows no sign of letting up," said Olivia Wein, NCLC attorney who was invited to testify. "From all indications, the exceptional tightness in the natural gas supply will keep prices high and volatile into the winter heating season," she said.

Wein worries that the sluggish economy and high fuel prices will push more households into trouble, especially those households still reeling from last year's energy bills.

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# NCLC Welcomes Staff

## Cohen

In March NCLC welcomed Alys Cohen as a staff attorney at its Washington, D.C. office, where she focuses on homeownership and other low-income consumer credit issues. She is a contributing author of the *Cost of Credit* and *Truth in Lending* manuals, provides training on consumer law to attorneys and other advocates and participates in NCLC's advocacy efforts.

Before joining NCLC, Cohen worked for five years as an attorney in the Federal Trade Commission's Bureau of Consumer Protection, Division of Financial Practices, where she specialized in credit discrimination and high-cost lending issues. She conducted investigations and litigation involving regional and national lenders, wrote congressional testimony and regulatory comments, and trained advocates and regulators on federal credit law. As a volunteer, she has organized trainings on



Carrie Hamilton, administrative assistant, and Greg Ingalsbe, summer intern, smile for OUTLOOK.

personal finance for formerly-homeless women in Washington.

## Hamilton

Also new to NCLC is Carrie Hamilton who has joined us as an administrative assistant in NCLC's Boston office. Before working at the Center she was employed at The Boston Consulting Group as a community service coordinator and administrative assistant.

Hamilton is a 2002 graduate

of Emerson College where she earned a BS in Speech with a Concentration in Management Communication.

## Summer Interns

NCLC staff got a helping hand this summer from **Shankar Duraiswamy**, a student at Harvard Law, who assisted NCLC attorneys on a variety of legal projects. **Greg Ingalsbe**, a senior at Boston University, supported the development staff's fundraising programs. Our thanks to them both - jobs well done!

## In Memoriam: Alan J. Roth

NCLC notes with sadness the death of Alan J. Roth, an NCLC Board member from 1978 to 2002 and Director *Emeritus* thereafter. Roth, a partner at Spiegel & McDiarmid, Washington, D.C., was an accomplished energy law specialist who worked tirelessly to protect consumers' interests in utility issues. He was a valued adviser to NCLC on its energy

initiatives, including the Low-Income Home Energy Assistance Program.

"Alan was a prized and respected member of our Board," said Willard P. Ogburn, NCLC executive director. "He was a good friend to NCLC and consumers everywhere and we will sincerely miss his intelligence, integrity, and compassion."

## Correction

Jeffrey Gottlieb, a principal at Berger & Gottlieb in New York, inadvertently was omitted from the co-counsel group identified in the Spring 2003 OUTLOOK as representing the class plaintiffs in the automobile finance discrimination case of *Smith v. Chrysler Corp.* pending in the Federal District Court for New Jersey. We regret the oversight.

# Thousands More to Receive Utility Discounts in Mass.

After two years of advocacy by NCLC on behalf of its low-income client groups, Massachusetts has announced a new program that could save the state's low-income residents millions of dollars per year on their electricity and gas bills. According to state officials, only 27 percent of eligible residents currently receive discounts on their utility bills. To boost enrollment, the Massachusetts Department of Telecommunications and Energy will require state administrators to review food stamp and welfare rolls to identify households that qualify for utility discounts.

"We're thrilled with this decision," said Charles Harak, staff attorney for NCLC.

"Utility discounts can save clients \$180 per year on telephone bills; a comparable amount, often more, on electric bills; and as much as \$300 to \$500 on gas bills, depending on how much gas is consumed," said Harak.

**"More families than ever are falling behind on their utility bills and will benefit from being placed on the discount rate.**

-Charles Harak

"We believe that this action will bring those discounts to thousands, even tens of

thousands, of new households," he added.

The Massachusetts ruling requires utilities to place households on the appropriate discount rate within 60 days of learning that they are income eligible. The utilities also must send a notice to the households letting them know that they have been placed on the discount rate and that they have the right to be removed from the discount if they so request.

The decision comes shortly after the state utility commission approved a 43 percent rate increase for Massachusetts Electric Company's residential electricity default service customers.

According to Harak, this made the ruling all the more timely. "Low-income households are facing another bleak winter due to the low levels of natural gas in storage and rising fuel oil prices," he said. "More families than ever are falling behind on their utility bills and will benefit from being placed on the discount rate."

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