

## *2003 Advocacy Highlights*



- Exposing Abusive Credit Counseling Activities
- Stopping Predatory Mortgage Lending
- Exposing Scams Aimed at Military Personnel and Veterans

- Warning Consumers About Refund Anticipation Loans
- Keeping the "Fair" in the Fair Credit Reporting Act
- Student Loan Advocacy
- Promoting Affordable Home Energy and Utilities Services



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## Introduction

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

In 2003, the Center carefully leveraged our limited resources to achieve concrete benefits for low-income consumers across the United States. We shared our expertise in federal and state consumer protection policies with attorneys representing ordinary consumers, community advocates and social services providers, and government officials and policymakers. As a well-respected advocate in our nation's courts, legislatures, and regulatory agencies, the Center informed and influenced the outcome of policy decisions affecting the economic security of millions of low-income families.

### Advocacy Highlights from 2003

#### Exposing Abusive Credit Counseling Activities

*More and more consumers are burdened by debt and struggling to stay financially afloat. But when they turn to credit counseling agencies for help, they sometimes fall into the hands of a new breed of firm that depletes their customers' assets and pushes them over the financial brink. Deceptive practices and outright scams are on the rise and more consumers are getting bad advice and access to fewer real counseling options. Incorporated as non-profit organizations, some agencies are operating like for-profit businesses, aggressively advertising on television and the Internet, reaping high revenues, and paying executive salaries that are much higher than average for the non-profit sector.*

- NCLC and the Consumer Federation of America documented the alarming transformation of the credit counseling industry in the report, *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants* (April 2003). The report drew public attention to the issue and stimulated action on the part of state and federal policymakers. It prompted the Attorney General of Missouri to investigate and subsequently file suit against AmeriDebt, one of the most notorious of the new breed of counseling agencies. Illinois, Texas, Minnesota, and the Federal Trade Commission have all since filed separate suits against AmeriDebt.

- Shortly after the release of our report, the Federal Trade Commission joined the Internal Revenue Service and the National Association of State Charity Officials in issuing a joint advisory to consumers, warning about the practices of these nominally nonprofit counseling agencies.
- As we urged in our report, the IRS has started looking into whether a number of agencies are violating the terms of their nonprofit status. The IRS is auditing more than 30 agencies and reviewing more than 40 new applications. The 30 organizations being audited account for more than 40 percent of the \$1 billion in annual revenue collected by national credit counseling agencies.
- Our work has prompted action on a number of other fronts, including the following:
  - several states (most notably Maryland) have enacted stricter regulatory controls on credit counselors.
  - best practices standards have been adopted by the two main trade associations, the National Foundation for Credit Counseling and the Association of Independent Consumer Credit Counseling Agencies.
  - the Senate Permanent Investigations Subcommittee of the Government Affairs Committee is planning to hold hearings on credit counseling in 2004.

### **Stopping Predatory Mortgage Lending**

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

### **Fighting Federal Preemption of State Consumer Protection Laws**

- NCLC wrote and obtained multiple signors to our comments arguing against the Office of the Comptroller of the Currency's ability to "preempt" the Georgia Fair Lending Law. We also filed comments in opposition to the OCC's proposed expansion of preemption for national banks and their operating subsidiaries. We are leading a fight against this intrusion into state consumer protection laws by educating lawyers, and providing assistance to state enforcement agencies and Congress.
- At the urging of the lending industry, the two U.S. Senators from Arkansas pushed hard to amend a bill going through the Senate Banking Committee which would have preempted Arkansas' limits on interest rates (set by the Arkansas state constitution). The voters of Arkansas have repeatedly rejected attempts to weaken the protections of this usury ceiling — the most protective of consumers in the nation. NCLC led a coalition of civil rights and consumer groups that opposed federal preemption of Arkansas' usury cap. Civil rights groups were important partners in this effort because they recognize that unregulated loan rates lead to higher charges for minorities. After significant analysis, activity, and discussion, this dangerous proposal was defeated.

### **Making RESPA Reform Meaningful**

- For the past several years the U.S. Department of Housing and Urban Development has been rewriting the regulations governing lender compliance with mortgage origination rules under the Real Estate Settlement Procedures Act. The proposal runs the gamut from offering positive changes (one suggestion would provide better mortgage shopping opportunities) to proposing dangerous changes (another suggestion would eviscerate compliance with the Truth in Lending and the Home Ownership and Equity Protection Acts). NCLC led the effort to protect consumers throughout HUD's process by providing the comprehensive analysis of the benefits, the dangers and needed changes to the proposed regulation, organizing other consumer and community groups to take the same position, and advocating with HUD, the Federal Reserve Board, the Bush administration and Congress on the policy issues. Publication of the final regulation is expected in 2004

### **Convening Researchers for the Symposium on Market Failures and Predatory Lending**

- NCLC hosted a ground-breaking meeting of the nation's leading experts on predatory lending May 17-18, 2003 at the John Marshall Law School in Chicago. The Symposium was attended by 90 experts, including prominent researchers, academics, selected lenders and secondary market players, attorneys, consumer and housing advocates, and government officials. Panel discussions and papers presented new research on the industry and covered critical issues such as loan securitization, risk-based pricing, and consumer education programs. The Symposium enabled important new links and working relationships to be forged among participants concerned with the abuses of predatory lending.

### **Exposing Scams Aimed at Military Personnel and Veterans**

*America's military bases are surrounded by predatory business that offer financial services at far higher costs than are widely available elsewhere to consumers. Military personnel are an especially ripe target because many are low-income, often financially inexperienced, and have a steady stream of secure income.*

- In May 2003, the Center published *In Harm's Way – At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans*. It documented the wide array of scams aimed at soldiers and veterans and has triggered a number of significant reforms. Military leaders have rallied against the predatory business ringed their bases, JAG officials have circulated the report worldwide, and NCLC has assisted in training JAG lawyers in defending against scam businesses. Some base commanders have expanded their off-limits designation of predatory businesses and many more are exploring this option.

*In Harm's Way* prompted action by state and federal lawmakers as well. NCLC served as a resource for policymakers who enacted federal legislation banning the misuse of certain veteran's benefits. The report was injected into North Carolina's debate over reinstating payday lending, helping to assure that the bill never came to a vote. It was also featured in a legislative hearing in Georgia,

where military leaders warned that payday lenders were preying on young sailors and soldiers, endangering their morale and combat readiness. As a result, the state legislature passed a very strong bill to rein in payday lenders, criminalizing some common practices, allowing for Racketeer Influenced and Corrupt Organizations Act prosecutions in some cases, and providing special protections for the military.

### **Warning Consumers About Refund Anticipation Loans**

*RALs are usurious (from 67 to 774 percent APR) short-term loans secured by the taxpayer's refund that are mostly sold by commercial tax preparers and their partner banks.*

- In January 2003, NCLC and the Consumer Federation of America published, *The High Cost of Quick Tax Money: Tax Preparation, 'Instant Refund' Loans, and Check Cashing Fees Target the Working Poor*. The report documented a rise in the number of RALs sold during the 2001 tax season (12.1 million, up from 10.8 million in 2000) and calculated that RALs drained \$1.2 billion from the federal Earned Income Tax Credit program.
- NCLC filed a test case against Santa Barbara Bank & Trust for illegally seizing a customer's 2002 tax refund to pay back an alleged 7 year-old debt to Household Bank. SBBT seized the refund (over \$2,000) after the consumer signed an application for a RAL at a commercial tax preparation chain. Unbeknownst to the consumer, the application contained a clause permitting SBBT to take her refund to pay back any debts allegedly owed, not only to SBBT itself, but to any lender that makes refund anticipation loans, including Household Bank

NCLC is arguing that SBBT's seizure of the tax refund and the bank's imposition of the clause permitting debt collection was unconscionable, unfair, and in violation of California debt collection laws. The suit was filed as a class action on behalf of California consumers who had their tax refunds similarly seized. NCLC is serving as co-counsel in the lawsuit with attorneys James Sturdevant and Monique Oliver of the Sturdevant Law Firm in San Francisco.

### **Shining the Light on Bounce Loans**

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

- To expose this new credit scheme to deplete the hard-earned assets of low-income Americans, NCLC co-authored a report, *Bounce Protection: How Banks Turn Rubber into Gold by Enticing Consumers to Write Bad Checks*. It includes a number of policy recommendations to the Federal Reserve Board to prevent banks from marketing bounce protection without receiving consumers' consent or spelling out the product's true costs.

### **Auto Finance Loan Bias**

*When financing their cars at automobile dealerships, consumers have been unwittingly charged hundreds of millions annually in undisclosed auto finance “markup” charges. Dealers raise the auto loan rates of buyers who arrange financing through those dealers, while consumers are led to believe that they are receiving a rate based on their credit rating. The subjective nature of the dealers’ markup has led to industry-wide discrimination against African-American and Hispanic consumers.*

- In 2003, African-American and Hispanic car buyers settled a groundbreaking lawsuit against Nissan Motor Acceptance Corporation over auto loans they received from Nissan and Infiniti dealers. NCLC acted as co-counsel in the suit, which alleged that NMAC’s credit pricing policy resulted in African-Americans and Hispanic consumers paying more in finance charges than whites, a violation of the federal Equal Credit Opportunity Act. NCLC served as co-counsel in the suit with Clint Gilmore, Michael Terry and Gil Gilmore of Nashville; Darnley Stewart of Bernstein, Litowitz, Berger and Grossman in New York; and Gary Klein of Grant & Roddy in Boston.

### **Keeping the “Fair” in the Fair Credit Reporting Act**

*On December 4, 2003, the Fair and Accurate Credit Transactions Act was signed into law. The legislation contained significant amendments to the Fair Credit Reporting Act on a broad range of topics.*

- While a number of consumer groups worked to protect consumers in the revision of the FCRA during 2003, the Center focused its efforts on several discrete issues. We were able to achieve important gains for consumers in the three following areas: (1) advancing the accuracy of furnisher reports; (2) ensuring the meaningfulness of the new risk-based pricing notice; and (3) ensuring that debt collectors were not permitted to avoid requirements of the Act.

### **Preserving Pro-Consumer Exemptions for Electronic Transactions**

*It is essential that families poised to lose their homes or vital utility service receive notice of their precarious position as well as potential legal remedies. By exempting certain transactions from laws that allow the sole use of electronic records, the federal Electronic Signatures Act requires that certain notices be provided to consumers on paper.*

- In 2003, NCLC gave voice to the consumer perspective in myriad policy debates on electronic transactions. We led the legal analysis and the education effort to preserve important exemptions from electronic transactions under the federal Electronic Signatures Act, as each of these exemptions was separately evaluated for efficacy and reasonableness by the Department of Commerce. NCLC successfully fought back all attempts to reduce the consumer protections in this seminal federal law.

### **Protecting the Fair Debt Collections Practices Act.**

*Many consumers need protection from debt collectors who try to intimidate them into paying back debts. Common creditor or collector tactics include talking with relatives, friends, and employers about a consumer's debts without her permission; making harassing or abusive telephone calls; and threatening to take actions that are illegal or not intended (i.e. filing a lawsuit against the consumer).*

- During 2003, a series of amendments to the Fair Debt Collection Practices Act were pushed hard in Congress by representatives of the debt collection industry. The Center led the opposition to these amendments and engaged in negotiations that ensured that the amendments do not damage the integrity of the Act and are matched by pro-consumer provisions.

### **Student Loan Advocacy**

*For low-income people with limited job skills, education is a long-term investment that can offer a path out of a low-wage career and open the door to a more secure economic future. Many poor people, however, simply cannot afford to return to school unless they receive student loans and grants. And even if they receive financial assistance, poor students need protection from exploitive trade school practices that can leave them worse off than when they entered.*

- Officials at the U.S. Department of Education requested NCLC's opinion 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.
- NCLC was invited by a Congressional committee to testify on the Debt Collection Improvement Act of 1996 and student loans. Our testimony documented rampant abusive practices used by private collectors of student loan debts. As a result of testimony submitted by attorney Deanne Loonin, both the Congressional committee and the Department of Education requested that NCLC keep them informed of student loan collection abuses.
- NCLC also submitted comments on the Department of Education'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 an open question whether the Department has the authority to begin garnishing under Debt Collection Improvement Act authority.

### **Promoting Affordable Home Energy and Utilities Services**

*NCLC's staff of experts possesses a wealth of experience improving low-income access to essential utility services and is frequently at the forefront of representing low-*

*income ratepayers' perspectives in front of public utility commissions and other agencies.*

- The 2<sup>nd</sup> Circuit Court of Appeals invalidated the Department of Energy's rollback of tougher standards for air conditioners that had been issued by the Clinton administration in January 2001. NCLC wrote an amicus brief in the case, *Natural Resources Defense Counsel v. Abraham, Sec. of DOE*, in which a number of other consumer and environmental groups and state attorneys general also participated. By reinstating the higher efficiency standards, families across the nation, especially low-income consumers, will reap the rewards through billions of dollars saved in electricity costs.
- In 2003, the Arkansas legislature passed legislation that, for the first time in state history, will fund a low-income energy efficiency program. Services under that program will be delivered by the community action agencies that currently deliver the federal Weatherization Assistance Program. NCLC worked with the Arkansas Association of Community Action Agencies to ensure that appropriate program evaluation measures are implemented to support long-term success. New efficiency program funding was expected to be about \$4.5 million per year, with additional amounts added depending on utility company participation.
- On February 5, 2003, the Massachusetts Department of Telecommunications and Energy extended the moratorium on terminating utility service to low-income customers, from March 15<sup>th</sup> to April 15<sup>th</sup> (for electric accounts) and May 1<sup>st</sup> (for gas accounts). This decision came at the urging of NCLC and the Massachusetts Attorney General's office.