

## Washington Outlook: Rough Waters Ahead

by Lauren Saunders

*NCLC Associate Director Lauren Saunders manages our Washington, D.C. office and directs NCLC's work on federal legislation and regulation.*

**A**s I write this, the Trump Presidency is only three months old. But we have seen enough to know that anti-consumer forces have more power than ever. I'll be frank. We will likely suffer some losses on the consumer protection front in the coming years. But I am not feeling defeated and I am certainly not ready to give up. We have been through tough times before, and we know that when we work together, we can minimize our losses in negative environments and always live to fight another day.



Lauren Saunders

At some point, President Trump will replace Rich Cordray (his term expires in July 2018), who has produced an amazing record of successes in areas ranging from mortgages to student loans to prepaid cards, debt collection, and credit reporting. We knew when we helped to create the CFPB that it would have its ups and downs, like all agencies. And we will fight tooth and nail to prevent permanent changes that weaken the agency.

For now, we are pushing the CFPB to finalize rules to outlaw forced arbitration clauses with class action bans in financial products, and to rein in predatory payday loans. We are preparing for a tough fight in Congress to defend these rules.

### Top Priority: Preserve the CFPB

One top priority is to preserve the CFPB as a strong and independent force protecting struggling consumers.

### Protect Critical Programs

President Trump wants to eliminate the Legal Services Corporation and other critical programs that help low income families, like the Low Income Home Energy Assistance Program. Fortunately, both of those programs have bipartisan support, and we are working closely with allies to save these programs.

We are fighting bills that would gut class actions and bills that would make it impossible for agencies to pass consumer protection regulations. Education Secretary Betsy DeVos has already withdrawn several policies aimed at curbing abuses by federal student loan servicers, and we may have to defend the federal direct student loan program and borrower protections. Banks are chomping at the bit to cut back hard-won mortgage protections. And we have much work to do to prevent an affirmatively harmful debt collection rule.

### Make your Voice Heard

Here is the most important message I have for you: now, more than ever,

*continued on page 4*

## NCLC Advocates for Older Americans Saddled with Student Loan Debt

**A**s consumer advocates, we regularly receive heartbreaking stories from older borrowers crushed by student loan debt. Sadly, over the last 10 years, the number of consumers aged 60 and older with student loan debt has quadrupled. The Consumer Financial Protection Bureau found that many older student loan borrowers struggle to afford necessities, and report skipping necessary health care needs more often than those without student loan debt.

Nearly 40 percent of federal student loan borrowers aged 65 and older are in default, and are often subject to having **Social Security benefits** seized to repay their student loans. Although there are rules to protect a portion of the recipient's benefits, the dollar amount protected has not changed since 1996, leaving a borrower in default with only \$750 a month – only \$9,000 per year! – on which to live.

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is a biannual publication of the National Consumer Law Center to inform our supporters about NCLC's advocacy. To receive *Consumer Impact* via e-mail, contact [csullivan@nclc.org](mailto:csullivan@nclc.org).



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## A Message from NCLC's Executive Director

Dear friends and NCLC supporters,

I wish it weren't so, but we have to face reality: the 2016 elections significantly increased the power of those who have vowed to roll back many of the pro-consumer protections that NCLC and our allies have helped win since the Great Recession. We have our work cut out for us.

NCLC's advocacy has helped level the playing field for low-income Americans, creating greater economic opportunity while protecting consumers against exploitative financial practices – but our victories are now in the crosshairs of banks, financial services companies, and

their lobbyists and friends in Washington, D.C. Consumer protections in mortgage servicing, bankruptcy, credit card and credit reporting, student loans, forced arbitration, and more are in danger.

Opponents of consumer protections are emboldened to push the agendas of predatory lenders, abusive debt collectors, and others who target struggling families, but they'll have a fight on their hands – and NCLC will be at the center of it. NCLC's experts are actively developing strategies to protect the

gains we've made, and we won't stop advocating for new and improved consumer protections while fighting to hold the ground we've won.

NCLC intends to wage a multi-faceted, integrated advocacy campaign to defend consumer rights in 2017 and beyond. We're adding strategic communications resources, including a new staff position made possible by several key leadership gifts. We're working to raise more funding to mobilize the consumer rights community, build and strengthen alliances, and increase our state advocacy while we continue to fight at the national level.

The common thread in those resource-building activities mentioned above? You. Support from consumer attorneys, advocates, activists and concerned citizens makes *all* of NCLC's work possible – and it is needed more than ever in this dangerous new political era. Thank you for your critical support of NCLC's work.

With gratitude,

Rich Dubois  
NCLC Executive Director



2016 Vern Countryman winner Mark Chavez (left) with NCLC Executive Director Rich Dubois

“Directing unclaimed settlement funds to NCLC is clearly not **just** an appropriate *cy pres* / ‘next best’ use of the funds – it is the **absolute best** use of unclaimed funds.”

– David J. Philipps, Philipps & Philipps



## Cy Pres Awards Help Advance Consumer Rights

The National Consumer Law Center welcomes *cy pres* designations of unclaimed settlement funds from class action lawsuits, which are used to support our consumer rights work and advance the core interests of underlying class members.

*Cy pres* awards support NCLC’s efforts to ensure a fair marketplace and access to justice for all consumers, including low-income people, older Americans, students, military service members, and veterans. Our work covers a broad range of consumer issues, including consumer protection, fair credit, debt collection, student loans, mortgages and foreclosures, financial services, bankruptcy, unfair and deceptive acts and practices, robocalls and telemarketing scams, credit reporting and discrimination, auto loans, energy and utility issues, privacy rights, criminal justice debt, civil rights, and more.

Class counsel often has the ability to nominate nonprofit, public interest organizations like NCLC to receive these funds, and NCLC is generally approved by courts after judicial review and consideration of the expertise we bring to bear in promoting consumer rights.

On behalf of low-income consumers, thank you to all those who have supported NCLC’s work through *cy pres* designations. Please consider nominating NCLC for a *cy pres* award at your next opportunity! If you would like to nominate NCLC for a *cy pres* award or discuss doing so, please contact Paul Laurent at [pl Laurent@nclc.org](mailto:pl Laurent@nclc.org) or call (617) 542-8010. Thank you!



“Designating National Consumer Law Center to receive *cy pres* awards is great and worthwhile for three reasons. First, the breadth and scope of NCLC’s national pro-consumer advocacy and education efforts make them a highly appropriate recipient in almost any case where consumers have been cheated or defrauded. Second, the fact that NCLC’s legal treatises are routinely cited in judicial opinions has earned them the trust and respect of the courts, and that of some opposing counsel. Third, not one penny of the award will be wasted. The money NCLC receives will benefit consumers exponentially, in the form of NCLC’s careful, dogged, and unwavering advocacy for regular people who are trying to get a fair deal.”

– E. Michelle Drake, Berger Montague

### Recent Cy Pres Awards, July – December 2016

Thank you to the following individuals and firms for advancing consumer rights by nominating NCLC for *cy pres* awards.

Jeffrey K. Berns  
David W. Epperly  
Andrea Farah

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Micheletti LLP  
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NCLC approves of the approach adopted by the American Law Institute in § 3.07 of its Principles of the Law of Aggregate Litigation regarding the criteria a court should apply to determining whether a proposed *cy pres* distribution is appropriate. NCLC also adheres to, and supports, Guideline 7, *Cy Pres Awards*, of the National Association of Consumer Advocates Standards and Guidelines for Litigating and Settling Consumer Class Actions (3rd Ed. 2014). The procedures set forth in these rules have been endorsed by federal courts as the best way to insure that (1) there is a maximum distribution to class members; (2) the designation of the remaining funds will be allocated for uses that are most likely to further the interests of absent class members; and (3) the selection process is not tainted by self-interest.

## Washington Outlook... *continued from page 1*

the key battleground is not in D.C. – it is at home in your states and congressional districts.

Every one of us – in red, blue, or purple states, with hostile or supportive representatives or senators – needs to make our voices heard. Sign up for NCLC Action Alerts and contact your elected officials through the new Take Action area of our website. Call and meet with your members of Congress. Write letters to the editor and op-eds. Pass on key action items to your friends and family in other states.

Unfriendly members of Congress need to tell their leaders that they do not want to risk your wrath with votes against consumer protections. Supporters in Congress, who have many battles to fight, need to hear that consumer protections are a priority, too.

The democratic process is the most powerful force we have on our side. With your help, I am confident that we will hold on to many of our tremendous gains, minimize our losses, and emerge in a position to continue increasing the progress toward consumer justice.

Visit the Take Action website: [nclc.org/issues/take-action.html](http://nclc.org/issues/take-action.html)

## Join Us to Take Action!

In this new political environment, it is more important than ever that pro-consumer voices are heard in Washington, D.C. NCLC recently added a **Take Action** section on our website, with information about high-priority campaigns and fast-breaking alerts to defend important consumer protections in Congress. Join us to save the CFPB, protect prepaid card users from hidden fees and fraudulent charges, end forced arbitration, stop anti-consumer legislation that would gut class action lawsuits, defend the Telephone Consumer Protection Act, and more. NCLC will continue to add resources for engaged citizens to work with us to defend and advance consumer protections!

Sign up for NCLC action alerts and learn more: [nclc.org/issues/take-action.html](http://nclc.org/issues/take-action.html)

## ADVOCATE SPOTLIGHT **Lauren Saunders**

**Q** How has your work changed over the 11 years you've been with NCLC?

**A** For most of my career at NCLC, we've made steady progress advancing consumer justice. Shortly after I started, we helped pass the Military Lending Act, which caps interest rates for service members. Then came the Credit CARD Act, the Dodd-Frank Act, and the creation of the Consumer Financial Protection Bureau (CFPB), among many other victories. Now, we're working to avoid a rollback of these and other hard-won protections. It can be frustrating to see how short memories are, or to hear elected officials who feel

that consumer protection is a partisan issue – but we keep fighting, with confidence that we'll prevail in the long run!

**Q** What is a typical work day like?

**A** It has completely changed. Last year, I was focused on how proposed rules to restrict forced arbitration and unaffordable payday loans could best be crafted to protect consumers, and how to gather public and CFPB support for improvements. I am still doing that, but now my work is more outward facing. On almost a daily basis, we are pushing back on new threats and looking for openings to make our voice heard. For example, in February, I learned about a new threat to block the CFPB's prepaid card rules, and worked with our great coalition partners to marshal support around the country to defend those rules. I am also working on longer term strategies, like highlighting the CFPB's work on behalf of military and veterans, and building support to defend a final rule we hope the CFPB will issue on forced arbitration.

**Editor's Note: As this issue was going to press, the clock expired on congressional efforts to block the pro-consumer prepaid card rule. We won (with a lot of hard work, strong allies, and your help)!**



**Q** What might readers be surprised to know about your work?

**A** There is more support for consumer protection than you might think among financial industry players, because while they do want to maximize profits, they also want clear rules and stability. For example, some banks want the CFPB to rein in overdraft fees, because they know that back-end fees on struggling families are not a healthy way to cover the costs of bank accounts. But they need the CFPB to create a level playing field. I often reach out to industry players to see what they can do to support our efforts, even when it is not anything we can point to publicly.

**Q** Describe one success in which you are especially proud of NCLC's role.

**A** The Credit CARD Act, which passed in 2009 and has saved consumers more than \$16 billion in "gotcha" fees, initially did not have many protections for struggling families who had missed a single payment. NCLC pointed out how millions of families were late on their payments, and persuaded the bill's sponsors to extend protection against retroactive interest rate increases. That one change has enormously benefited families, many of whom live paycheck to paycheck.

## Massachusetts Housing Program Builds Strong Foundation for Families

NCLC was a key partner in a robust initiative that recently ended with great success by providing stable housing for thousands of vulnerable families. The four-year HomeCorps program goals were to: preserve homeownership where possible; maintain home equity; minimize dislocation; and ensure that participating families obtained or remained in safe, long-term housing. By the program's conclusion, over 99% of households served were in permanent housing, with less than 1% needing assistance to access temporary shelter. The initiative was primarily funded by the Massachusetts Attorney General from settlements of lawsuits concerning banks' abusive mortgage practices.

The HomeCorps program was led by Meg Connolly with supervisory assistance from Dick Bauer, both of counsel to NCLC. Our attorneys Charles Delbaum and Geoff Walsh served as liaisons to develop training programs and advise Massachusetts civil legal aid attorneys in foreclosure defense work. In all, 32 training programs were presented addressing both substantive topics and legal skills. Additionally, many HomeCorps attorneys attended NCLC conferences to further hone their skills and benefit from sharing ideas with their peers. Legal aid attorneys also represented clients in a variety of administrative proceedings to obtain public benefits.

As a result of their collective work, foreclosure laws were clarified and enforced, and many hundreds of households benefited from excellent representation. The Massachusetts IOLTA Committee obtained more funding, allowing assistance for hundreds of additional families in the project's final year. In total, financial benefits for low-income homeowners, former homeowners, and tenants were conservatively calculated at \$24.3 million, more than twice the cost of the program.

## NCLC Launches Campaign to Defend the Telephone Consumer Protection Act and Stop Robocalls

Robocalls compromise privacy and subject vulnerable consumers to telemarketing scams and other often-abusive intrusions, which is why NCLC works to defend and strengthen laws like the Telephone Consumer Protection Act (TCPA). Unfortunately, the TCPA is in grave danger due to the new political environment in the nation's capital – but NCLC has a plan to save it!

NCLC Senior Counsel Margot Saunders, with the insight and assistance of TCPA experts including Keith Keogh, Alex Burke, Beth Terrell, John Barrett, Billy Howard, and others are developing a plan to preserve the TCPA's safeguards against the aggressive efforts by industry to unwind important consumer protection victories.

### Preserve Hard Won Consumer Protections

Many of these industry efforts are reflected in filings at the FCC, such as a petition from student loan servicers asking for a reversal of the consumer protections for robocalls to collect federal student loan debt and a petition from the Mortgage Bankers Association, asking again (after being denied) for an exemption

for mortgage servicing calls, and other industry requests to loosen the strictures of the TCPA against unwanted calls.

NCLC has filed comments opposing all of these efforts on behalf of our low-income clients and multiple consumer and legal aid groups. We anticipate that any consumer victories at the FCC will be followed by legislative efforts in Congress to limit class action lawsuits and damages under the TCPA, so we're working with Senator Ed Markey (MA) and others in Congress to mount a strong defense.

### Demand Protections from Robocalls

With your support, we plan to have consumers contact their representatives and regulators to demand protections from these unwanted calls. The message is simple: Stop Robocalls to Cell Phones – Defend and Extend the Protections of the TCPA!

Thank you to all who join with us to defend TCPA and protect consumer rights.

*Take Action by contacting your U.S. Representatives and Senators and asking them to "Stop robocalls by defending and extending the protections of the Telephone Consumer Privacy Act!"*



## Award Winners Recognized for Making a Difference

At NCLC's annual Consumer Rights Litigation Conference, we make an effort to recognize outstanding consumer attorneys for their work to benefit clients and advance consumer protections. In the spotlight at last October's conference were five attorneys who did just that.

Mark A. Chavez received the **Vern Countryman Award**, a lifetime achievement award, chosen by peers. A former NCLC board member and current member of the NCLC Partners Council, founding member of the National Association of Consumer Advocates (NACA), and member of the board of Public Citizen, Chavez has spent his career fighting for those who cannot fight for themselves. From his early years advocating for prisoners' rights and people being cheated in insurance scams, to his recent sweeping victories in post-repossession cases that erased millions of dollars of debt for low-income consumers, Chavez has made an extraordinary difference in the lives of countless consumers.

In an emotional acceptance speech, he said, "We are all a product of our own histories. No one is truly a self-made man or a self-made woman. We all stand on the shoulders of others." Chavez acknowledged the hard work of his father, his Uncle Hugh, and a career lawyer who taught him "the value of precision and economy in the U.S."

The NCLC Partners Council also presented the second annual **Rising Star Awards** at the CRLC. Established in 2015, the Rising Star Award honors attorneys who have practiced law for 15 years or less and have made significant contributions to consumer law within the past two years. This year, four attorneys received the Rising Star Award: Gina Chiala, founder of the Heartland Center for Jobs and Freedom; J. Rachel Scott, staff attorney at the Senior Citizens Law Project of Atlanta Legal Aid Society; Carolyn E. Coffey, director of litigation for Economic Justice at MFY Legal Services, Inc.; and Claudia E. Wilner, senior attorney at the National Center for Law and Economic Justice.

All four attorneys garnered tremendously successful settlements for their low-income clients, outcomes that will shape future court decisions in a positive way for consumers.

To learn more about the 2016 award winners, or to nominate candidates for the 2017 awards, visit [nclc.org/about-us/awards.html](http://nclc.org/about-us/awards.html)



2016 Rising Star winners (left to right): Carolyn Coffey, J. Rachel Scott, Gina Chiala, and Claudia Wilner

## NCLC Welcomes New Student Loan Attorney



In February, **Joanna Darcus** joined NCLC as the Massachusetts Legal Assistance Corporation (MLAC) Racial Justice Fellow. Darcus will work on behalf of consumers

burdened by student loan debt or cheated by for-profit schools, focusing special attention on borrowers of color. She will provide direct legal representation to low-income clients in Boston, employ administrative and legislative advocacy in Massachusetts; bring impact litigation, if appropriate; and use a range of tools to educate the media, policymakers, and consumers in communities of color about navigating student loan debt and the dangers of for-profit school scams.

As an expert on student loan issues, Darcus has spoken at national conferences and high-level meetings with student loan policymakers, and contributes to NCLC's Student Loan Law manual. Previously, Darcus was a supervising attorney at Community Legal Services, Inc. of Philadelphia. She is a graduate of Williams College and Duke University School of Law.

"Since high-quality, affordable higher education is not yet readily available to all, I am motivated to pursue policy reforms while also helping individual low-income student loan borrowers to understand and pursue their student loan discharge and repayment options," said Darcus. "I'm thrilled to join the NCLC team and continue to deepen my expertise and broaden my experience, so I can be an even stronger advocate."

## Student Loan Debt... continued from page 1

"... lost my job [in] December 2015, [was] diagnosed with cancer and had surgery. Could not work ... I only get \$931 a month and cannot live on that, plus if they garnish my wages, I don't know what will happen to me"

– from a 64-year-old student loan borrower

A 2016 U.S. GAO report found that for over two-thirds of borrowers with a monthly benefit below poverty, the money deducted from their Social Security benefits only pays fees and interest, so the amount of their debt was not even reduced. "Because federal student loans have no

statute of limitations, borrowers – especially borrowers experiencing financial hardship – can have student loan debt for decades," said National Consumer Law Center's Student Loan Borrower Assistance Project Director Persis Yu. NCLC advocates have urged Congress to better protect Social Security recipients. At a minimum, Congress should index the \$9,000 exemption to cost of living or inflation increases, and apply a ten-year limit to Social Security offsets. "For too many borrowers," said Yu, "there is no light at the end of the student loan debt tunnel – and that needs to stop."

Read a report on NCLC's recommendations to protect older student borrowers at [bit.ly/2oQhi35](http://bit.ly/2oQhi35); sign up for NCLC's Student Loans blog at [studentloanborrowerassistance.org](http://studentloanborrowerassistance.org)

# Thank You!

NCLC depends on the support of attorneys, activists and allies who help us protect and defend consumer rights and advance economic justice in our society. On behalf of the millions of low-income families, students, elders, veterans and others whose lives are impacted by NCLC's work, we express our gratitude to all who have contributed to NCLC, including the following 2016 leadership donors:

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If you believe you have been mistakenly excluded from this list, please contact Paul Laurent, NCLC Director of Leadership Giving and Engagement, at [plaurant@nclc.org](mailto:plaurant@nclc.org) or (617) 542-8010. **Thank you for your support!**

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## **INSIDE:** NCLC urges supporters to Take Action to defend consumer rights! (Page 4)

*The nonprofit National Consumer Law Center<sup>®</sup> (NCLC<sup>®</sup>) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training.*

# Consumer Rights Litigation Conference

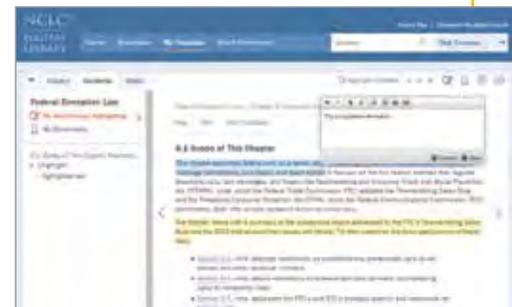
November 16-19, 2017 • Washington, DC

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