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# Outlook

NATIONAL CONSUMER LAW CENTER

## NCLC Played Key Role in Credit Card Reform Sweeping Credit Card Reform Bill Signed into Law *Curbs Unfair and Abusive Practices*



*With key lawmakers looking on, President Barak Obama signs the credit card reform bill into law.*

On a brilliant spring day in May, consumer advocates celebrated the signing of a sweeping credit card reform bill during a Rose Garden ceremony at the White House. NCLC's Lauren Saunders was among the group of lawmakers, congressional aides, and advocates looking on as President Obama signed the landmark legislation.

"It was a great day for the consumer movement," said Saunders. "Without question this is the strongest consumer protection measure that we've seen at the national level in a long time," she said. "It took years of coordinated and persistent advocacy to get such a strong bill through Congress and on the president's desk."

Many of the provisions in the Credit Card Accountability, Responsibility, and Disclosure Act grew out of seeds planted by NCLC. In 2007 NCLC presented an

*continued on Page 10*

*Without question this is the strongest consumer protection measure that we've seen at the national level in a long time.*

**LAUREN SAUNDERS**

## Loan Mod Scammers Flourishing in Foreclosure Crisis Fill Vacuum Left By Uncooperative Servicers

Exploiting the despair of families on the brink of foreclosure, an aggressive new industry of scam artists is squeezing the last dollars from desperate homeowners. The scammers entice their victims by offering to help modify the terms of a homeowner's mortgage loan. All too often, of course, the scam artists abscond with their fees and nothing is done for the homeowner.

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# Outlook

is a biannual publication of the National Consumer Law Center intended to inform our supporters about the Center's advocacy and fundraising activities.

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## **A NOTE FROM THE EXECUTIVE DIRECTOR**

I'm proud to say this year marks NCLC's 40th anniversary—and 40 years of working for consumer justice feels pretty good. We remain as we began, when we were a legal services support center housed in a small office at Boston College, committed to justice for vulnerable consumers and with a passion and dedication to helping those in need.

Over the years we've seen many consumer abuses, we've fought many battles, and we've won some very important victories that have changed the way consumers are treated in the marketplace. NCLC has been the voice for low-income consumers, speaking out on their behalf when others turned a deaf ear to the need for consumer protections. I'm proud and pleased to reflect on the knowledge that NCLC and its many talented, hard-working staff members have made a real difference in the lives of countless consumers in need.

And we've been able to do that thanks to the many donors and friends who have supported our efforts in the last 40 years. We thank everyone who has helped NCLC in the past in the fight for consumer rights and we urge those who have not yet made a gift to step forward now with a contribution of your own.

WILLARD P. OGBURN

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## NCLC Blocks Threat to Low-Income Utility Services

A utility company plan to force low-income residents to pre-pay for electric services was rejected by the state's utility commission after hearing vigorous objections from NCLC.

The Massachusetts Department of Public Utilities dismissed the proposal from Western Massachusetts Electric Co., saying the program would have unfairly targeted low-income customers and gotten around state laws meant to help struggling consumers keep the lights on.

"If this plan had been allowed to go forward, it would have threatened the health and safety of households across the state, especially those with young children, older adults, and individuals with disabilities," said John Howat, an NCLC advocate whose detailed critique of the plan was reflected in the DPU decision.

Western Mass. Electric had proposed a pilot program under which 600 to 800 low-income households in the Springfield, Mass. area would have paid for electricity in advance, while other

low-income households were charged a premium for any power they used beyond what the company called the "basic" necessities. The plan was filed to as part of the state's effort to study so-called "smart grid" technologies, which help customers reduce energy use.

On behalf of the state's low-income weatherization and fuel assistance program network, Howat presented written objections to the company's plan, charging that it could allow the company to shut off power to households in violation of state consumer protection laws.

Many utility companies in other states are considering or have already adopted prepayment meters. In Great Britain, where prepayment meters are widely used, they are disproportionately concentrated among lower-income households and cost more than traditional meters.

"From everything we've seen in Britain and other states, prepayment metering leads to more expensive, more frequently interrupted utility services" said Howat. "We hope that other states will follow

the lead of Massachusetts and reject these plans."

For more information on prepayment meters, see [www.NCLC.org](http://www.NCLC.org)

*If this plan had been allowed to go forward, it would have threatened the health and safety of households across the state, especially those with young children, older adults, and individuals with disabilities.*

**JOHN HOWAT**

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# STUDENT BORROWERS CRUSHED BY PRIVATE LOAN DEBTS

## NCLC Urges Loan Restructuring and Repayment Flexibility

Unlike government student loans, student loans issued by private lenders have been designed to reap quick profits for the lenders. During the boom economic years private student loans were sold in pools to investors (like subprime mortgages). As a result, asset-backed securities backed by student loans grew from \$3.1 billion in 1995 to \$77.5 in 2005. Loan products were thus developed for this repackaging rather than to provide the most affordable and sustainable products for students.

The effect of these loans on individual borrowers is documented in a new report from NCLC's Student Loan Borrower Assistance Project. "Too Small to Help: The Plight of Financially Distressed Private Student Loan Borrowers," highlights the failure of private lenders to voluntarily provide flexibility and other assistance to the neediest borrowers. Private student loans are not subsidized or insured by the federal government and may be provided by banks, non-

*Private student loans are almost always more expensive than federal government loans.*

**DEANNE LOONIN**

profits, or other financial institutions. "Private student loans are almost always more expensive than federal government loans," said author Deanne Loonin, a staff attorney." This is especially true for borrowers with lower credit scores or limited credit histories. Unlike most government loans, there are no loan limits

that will help prevent over-borrowing. Private loans also don't have the same range of protections for borrowers that government loans have."

The annual volume of new private student loans soared over the past decade as college tuitions grew, grant aid stagnated, and the government set limits on its loans. Many of these loans were destined to fail due to high interest rates and limited borrower ability to repay.

"In recent years, Wall Street funded and profited from a dramatic surge in the marketing of expensive private loans to students," said Loonin "Now, in the midst of a recession that has thrown millions of Americans out of work, former students and their families need relief from mounting debt."

NCLC's report urges the federal government to require lenders and servicers to offer private student loan borrowers loan restructuring and repayment flexibility, to restore the rights of financially distressed borrowers to discharge private student loans in bankruptcy, and to impose more stringent regulations (e.g. tougher underwriting standards and restrictions on fees and interest rates) on the private student loan market.

"We need to fight to open the doors to higher education to low-income and disadvantaged students by increasing the availability of grant aid and inexpensive loans funded or insured by the government," said Loonin. "We also need government intervention to help relieve the burden of oppressive debts from existing private student loans."

*As OUTLOOK went to press, The Federal Reserve Board approved final amendments to Regulation Z under the Truth in Lending Act that revise the disclosure requirements for private education loans. The amendments implement provisions of the Higher Education Opportunity Act enacted in August 2008. See [www.NCLC.org](http://www.NCLC.org) for the latest information.*

*Excerpt from "Too Small to Help: The Plight of Financially Distressed Private Student Loan Borrowers"*

### Nowhere to Turn

Joe is a 25 year old student at Salem State College in Massachusetts. He took out federal loans to help defray expenses at the public college. Unfortunately, about five years ago, he saw an advertisement for a for-profit culinary school. The price tag of about \$35,000, they said, would be easily repaid through lucrative earnings after graduation. Joe was young and impressionable and eager to work in the culinary field, so he signed up. He found out almost immediately that the school's statements were empty promises. The teachers were inexperienced and the materials and equipment inferior. He asked about leaving and was told that he could not get a refund. He stayed and finished and was never given job placement assistance, despite his requests. He has since moved on and tried to put the experience behind him, but the loans will not go away. He thinks he will be able to manage the federal loans, but his two private loans with current interest rates of about 15% are unaffordable. He says he wants to pay something and has asked for a break, but the creditor offers only forbearances and in-school deferments. In response to Joe's request for assistance, the creditor replied that Joe's obligation was not negotiable. Joe is angry and frustrated and has nowhere to turn. His future plans to build assets and a family will be delayed as he tries to figure out a way to deal with this inescapable debt burden.

# Staff

## NCLC Adds New Staff Attorneys to Its Line-up of Experts



NCLC's newest staff members: Darlene Wong, Arielle Cohen, Leah Plunkett

### New Staff Strengthen NCLC

**DARLENE WONG** joins us from the Pennsylvania Attorney General's Office, where she practiced extensively before the Public Utility Commission in cases involving electricity, gas, water, and telecommunications companies. She'll continue focusing on energy issues at NCLC and will also take on additional consumer work.

Before joining NCLC, **ARIELLE COHEN** was a Skadden Fellow at the New Jersey Institute for Social Justice, concentrated on state legislative advocacy on affordable housing, predatory lending, and related issues. After graduating law school, she clerked for Judge Lawrence M. Baskir, U.S. Court of Federal Claims. She will work with NCLC's litigation unit.

Prior to NCLC, **LEAH PLUNKETT** worked for New Hampshire Legal Assistance, where she raised funding for

and implemented an innovative youth law project. She has litigated and lobbied before numerous public bodies and worked with public agencies, legislatures, and the courts in various roles. Immediately after law school she clerked for Judge Catherine C. Blake of U.S. District Court, Baltimore. She'll be working on a wide range of consumer issues at NCLC

*Andrew Pizor*

### Consumer Rights Litigation Conference

October 22-25, 2009  
Philadelphia, PA

Info at [www.NCLC.org](http://www.NCLC.org)

### Pizor Joins NCLC's D.C. Staff

NCLC welcomed Andrew Pizor as a staff attorney in our Washington D.C. office this April, and immediately put him to work on a report on loan modification scams, comments to the FTC on their potential regulation, ways to make mortgage financing more widely available to owners of manufactured homes, and other issues related to mortgage financing and foreclosure defense. He is also a contributing author to the forthcoming 2009 supplements to *Foreclosures* (2nd ed 2008) and *Truth in Lending* (6th ed 2007).

"We are fortunate to have Andrew join us," said NCLC Executive Director Willard P. Ogburn. "He brings valuable consumer expertise with him and NCLC will be the stronger for it."

Pizor comes to us from the Connecticut Fair Housing Center, where he was involved in predatory lending litigation and played a pivotal advocacy role in the state's anti-predatory lending legislation. He was previously an associate at Consumer Law Group, LLC in Connecticut representing plaintiffs and defendants in consumer protection litigation.



## Recent Cy Pres

Court Awards received  
since June 2008

We appreciate the support of those who helped to direct cy pres to NCLC in the past year:

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Craig Shapiro, Rand Bragg

For information on directing a cy pres to NCLC, contact Willard P. Ogburn, or Suzanne Cutler at 617-542-8010.

## AGAIN AND AGAIN

### Bragg Directs Court Awards to NCLC



*Rand Bragg has directed 19 cy pres awards to NCLC in the last 8 years.*

Rand Bragg of Horwitz, Horwitz, & Associates is more experienced than most at directing court awards to NCLC—in the last eight years he's directed 19 *cy pres* to the Center!

Bragg, whose practice is solely fair debt collection cases, usually co-counsels 25 to 75 cases a year. He knows from practice that sometimes directing a *cy pres* to NCLC is a simple, straightforward process. Other times it requires tough negotiating to overcome the opposition of defense attorneys who object to NCLC receiving the funds. "I try to direct court awards to NCLC because it's the most qualified recipient for any undistributed funds for the consumer classes I represent," explained Bragg whose *cy pres* awards are usually in the four-to six-figure range.

"*Cy pres* awards—big and small—are an indispensable source of support for NCLC in our efforts to assist and protect those consumers most likely to be the victims of illegal practices," said Willard P. Ogburn, NCLC executive director. "We're grateful for Rand's longstanding support of NCLC. These funds have helped us fight many battles on behalf of

struggling consumers and we're most appreciative."

*Decades of experience as a consumer advocate.*

Bragg is well known to NCLC as a contributing author to *Fair Debt Collection*, a speaker at NCLC conferences, a member of its Partners Council, and a former Fellow at NCLC. He also has published articles on debt collection practices for *Ohio Consumer Law* and the *Loyola Consumer Law Reporter*. Bragg is the recipient of the National Association of Consumer Advocates annual Consumer Attorney of the Year award for 2006.

During his 30-year career, Bragg has held numerous positions devoted to protecting the rights of consumers and working men and women. He was Litigation Coordinator of the United Auto Workers Services Plan; Executive Director of Lehigh Valley Legal Services, Allentown, Pennsylvania; Deputy Director of Northern Pennsylvania Legal Services, Scranton, Pennsylvania; and Project Director of the Senior Citizens Law Project, Pennsylvania Legal Services Center.

# Thank You!

Unrestricted support for NCLC's advocacy programs is crucial to our ability to respond whenever and wherever the need for our expertise is greatest. We appreciate the contributions from the generous individuals and firms listed below who have helped to give us this flexibility.

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# NEW GRANTS

Following are special project grants that were received by NCLC since our Spring 2009 edition of OUTLOOK:

## **Consumer Protection Fund of the Attorneys General**

\$60,000 for the Consumer Rights Project, which will be used to fund our upcoming conference, bankruptcy trainings, and free distribution of *Bankruptcy Basics*. Bob Hobbs is the project director.

## **Annie E. Casey Foundation**

\$75,000 for our Auto Project, to engage in auto policy advocacy at the state and federal levels. We will provide technical assistance to advocates across the country and educate policymakers, the public, and the media on the importance of auto issues to low-income families and

the need for reform. John Van Alst is the project director.

## **Consumers Union**

\$10,000 to update our Small Dollar Loan Product Scorecard. The revised Scorecard will reflect changes in state laws governing small dollar loan products. Chi Chi Wu is the project director.

## **Energy Foundation**

\$105,000 for the Appliance Efficiency and Low-Income Energy Project, which covers a broad range of our advocacy on utility issues. Charles Harak is the project director.

## **The Institute for Foreclosure Legal Assistance**

\$200,000 for a continuation grant that will enable us to provide foreclosure prevention trainings to legal services attorneys, create an online foreclosure prevention

training program, and provide back-up and support to legal services attorneys. Diane Thompson is the project director.

## **Massachusetts Bar Foundation**

\$15,000 for the Debt Collection Justice Project, to reform the treatment of individual consumers in debt collection cases before the small-claims and district courts in Massachusetts. Bob Hobbs is the project director.

## **Open Society Institute**

\$150,000 for the Foreclosure Mediation Project, which will study foreclosure mediation programs operating across the country and prepare a set of best practices for foreclosure mediation. We will also provide support to other advocates as they develop new mediation programs. Geoff Walsh is the project director.

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## **NCLC Mourns the Death of Two Who Dedicated Their Lives to Social and Economic Justice**

NCLC is saddened by the recent deaths of two men well known to NCLC. Both inspired those who knew them, and both made a real difference in the lives of many who never knew them, but nonetheless benefited from their lifetime commitments to social and economic justice and the law.

### **REGINALD C. LINDSAY**

Growing up in the segregated south, U.S. District Judge Reginald Lindsay overcame significant obstacles to become an inspiration and role model. He resigned from Boston's Hill & Barlow law firm after being appointed to the Massachusetts federal court in 1993. NCLC remembers him best as a member

of our Board of Directors. Although he stepped down when appointed to the court, he continued a warm relationship with NCLC. "He was an exceptional man—brilliant, thoughtful, kind, good humored, and dedicated to justice for everyone," said NCLC Executive Director Will Ogburn.

### **DAVID RAMP**

David Ramp dedicated his life and his practice of the law to providing legal assistance to the disadvantaged. "He was a leader in the world of consumer advocacy whose example and success continue to be magnified by those who know of his work," said Ogburn. "His passing is a loss for all." Ramp was best

known as one of the country's foremost expert on rent-to-own and received NCLC's Vern Countryman Award in 1997 after he and his partner won a major class action case on rent-to-own abuses on behalf of 14-15 thousand low-income customers.

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## New Practice Tool: *Instant Evidence*

Tim Eble, a South Carolina attorney with twenty-eight years of litigation experience in personal injury, consumer cases, and financial class actions, is the brains behind *Instant Evidence*, NCLC's newest book in its library of manuals, consumer guides, and practice aids.

More than once when litigating a case, Eble told *Outlook*, he had wished for a quick, fingertip reference to federal evidence and objections. After much time, thought, research, and the review of years of case notes and files, he put his own guide together. He soon recognized that other attorneys would also find it an invaluable and quick reference for use during trials when evidentiary decisions have to be made in seconds.

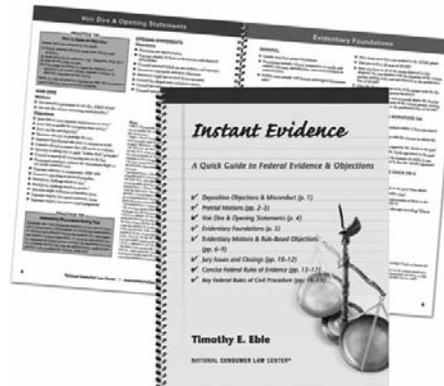
He donated his reference to the Center with the intention that it be a money-maker for us. "Eble's generosity in giving this guide is no surprise to NCLC," said NCLC Executive Director Willard P. Ogburn. "He has a long history with the Center as a valued friend, supporter, and member of our Partners Council, and this is yet another example of his generous spirit."

The Center enthusiastically took him up on his book offer and worked with him to turn his draft into a guide with highly condensed federal rules of evidence, evidentiary objections by rule number, and other common objections, motions, and practice tips for federal (and State) court depositions and trials. "I believe *Instant Evidence* will bring an edge to litigators who use it by reducing the possibility of evidence being wrongfully admitted or excluded due to a trial lawyer overlooking a possible legal argument to advance his case," said Eble.

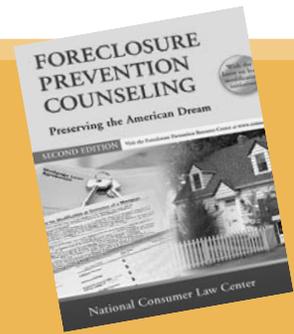
Eble is licensed in South Carolina, Kentucky, and Ohio, with trial experience in nine states. He is a contributing

author to NCLC's *Consumer Class Actions* (6th ed 2006) and Conte & Newberg's *Newberg on Class Actions, Fourth*. He lectures regularly on class actions and civil procedure and has served as an expert on legal ethics, class action issues, and the award of attorney fees.

*Instant Evidence*, under 20 pages, is spiral bound to lay flat and laminated to hold up during constant use. Different notations or highlights can be created for each trial with a dry erase pen. \$25. Order securely online at [www.consumerlaw.org](http://www.consumerlaw.org).



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## Revised Edition of Foreclosure Prevention

NCLC just released the new *Foreclosure Prevention Counseling Second Edition with Companion Website* (416 pp.) for housing counselors, paralegals, and attorneys less interested in foreclosure litigation than obtaining a loan modification or workout.

It includes the Barack Obama Administration's "Making Home Affordable" program and other new loan modification initiatives, tips on how to obtain a workout. The website contains numerous practice tools including a foreclosure prevention intake form, a sample qualified written request, consumer handouts, loan calculator, and more.

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## Credit Card Reform Bill

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exhaustive analysis of credit card abuses in Senate testimony and in voluminous comments to the Federal Reserve, and exposed the shocking charges and fees associated with subprime credit cards in the report, *Fee Harvesters: Low-Credit, High-Cost Cards Bleed Consumers*.

As the bill moved through Congress, policymakers turned to NCLC again and again for our deep expertise in consumer credit law and to ensure that the unique needs of low-income consumers were taken into account.

“There is no question that members of Congress and the Administration felt the depth of public anger over credit card abuses and recognized it was time to act” said Saunders, who along with staff attorney Chi Chi Wu was instrumental in working out details during final tough negotiations. “I hope the consumer community can build on this victory as we push for restructuring of the financial regulatory system and substantive protections against other abusive products.”



*NCLC's Lauren Saunders with Senate Banking Committee Chairman Chris Dodd (D-Conn.) at the Rose Garden signing ceremony.*

## No More Credit Card Tricks and Traps

Important reforms NCLC pushed for in the new law include:

- **INTEREST RATES CANNOT BE INCREASED RETROACTIVELY** on existing balances unless the consumer is 60 days late with a payment; even then, the consumer has a second chance to restore the original rate if on-time payments are received for 6 months. Although we urged that all retroactive rate increases be banned, this is a significant improvement over the 30-days late rule in the FRB rules and will save millions more Americans from retroactive rate increases.
- **ISSUERS ARE PROHIBITED FROM IMPOSING FEES** that consume more than 25% of the card's credit limit. This “fee harvester” provision addresses the practice highlighted in—and adopts a term coined by—our 2008 investigative report on the

abusive practices of subprime credit cards aimed at consumers with bad credit (available on our website, [www.NCLC.org](http://www.NCLC.org).) The FRB rules allowed fees to consume 50% of the card's credit limit.

- **WHEN MORE THAN ONE INTEREST RATE CAN APPLY** to the account, payments greater than the minimum required payment must be used to pay off the amount in the balance with the highest interest rate.
- **PENALTY FEES MUST BE REASONABLE AND PROPORTIONAL** to the omission or violation. Standards for reasonable fee levels are to be issued by the Federal Reserve Board.

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## Loan Mod Scammers

continued from Page 1

The explosive growth of these loan mod scams is described in a new report from NCLC, “Desperate Homeowners: Loan Mod Scammers Step in When Loan Servicers Refuse to Provide Relief.”

“The pitch by this new breed of predator is that, for a fee—which can reach several thousand dollars—they will negotiate a loan modification for you,” said Andrew Pizor, a co-author of the report and staff attorney. “The hitch is that the ‘work’ performed, if any, leads nowhere and results in the homeowner losing both money and time, leaving them closer than ever to foreclosure.”

The report explains how the mortgage loan modification industry was born after the nation’s housing market began to collapse and how it has flourished because mortgage loan servicers cannot or will not meet borrower need for assistance. To make matters worse, non-profit counseling agencies certified by the federal government have found themselves overwhelmed and not always able to respond to consumer demand.

Seeking to fill this vacuum, loan modification operators—some of whom have

connections to the defunct subprime mortgage industry—have seized on reports about legitimate government and industry loan modification programs and publicity about millions of dollars of bailout money available to attract business. Sales pitch artists are being recruited to join this “hot” new industry with ads implying that they can earn enough to buy a \$1 million luxury car.

“A lot of consumers are fooled because loan mod outfits try to look like they’re affiliated with the government,” said Pizor. “One uses a web address, USHUD.com, that sounds suspiciously similar to the U.S. Department of Housing and Urban Development. Their web site once also claimed to be ‘the name you know, the name you trust.’”

The loan modification industry did not exist before the real estate market began to collapse in 2006. By the summer of 2007, the Better Business Bureau reported receiving complaints from hundreds of homeowners in all 50 states who had each paid up to \$1,300 to con artists promising help but doing little or nothing. A little more than a year later, the state of

California was receiving an average of 900 complaints per month with 175 active investigations—and that was just about scams involving attorneys. Since then some homeowners have been charged fees exceeding \$4,000.

The Federal Trade Commission has asked for public comment on whether it should issue rules to regulate the conduct of these loan modification or foreclosure “rescue” companies. NCLC submitted detailed comments urging the FTC, among other things, to ban up-front payments for mortgage assistance relief services, permit fees only if services produce sustainable and affordable loan modifications, and address the root cause of the scams by requiring lenders to offer loan modifications before foreclosing.

*A lot of consumers are fooled because loan mod outfits try to look like they’re affiliated with the government.*

**ANDREW PIZOR**

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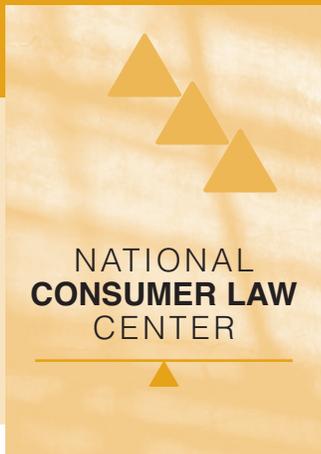
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*The National Consumer Law Center is the nation's consumer law expert, helping consumers, advocates and public policy makers use powerful and complex consumer laws on behalf of vulnerable Americans. In doing so we have built—and are at the center of—a growing community of advocates with a commitment to consumer justice. We protect, promote and interpret the statutes these advocates use in their practices, knowing that as more attorneys understand the complexities of consumer law we increase access to consumer justice and move toward our goal of economic justice for all.*



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## NCLC Launches Webinar Trainings

NCLC is proud to announce the launch of our webinar series! In the first four months we've trained over 2000 advocates on a wide range of topics including foreclosure prevention, bankruptcy, debt collection, auto issues, the protection of exempt benefits, energy and utility problems, and more. Attendees have praised these online trainings as invaluable to their practices and cost-effective. Funding to start the webinars has been provided by a grant from the U.S. Administration on Aging.

The webinars are run by Jessica Hiemenz, NCLC's new conference and training coordinator. To sign up for our webinar email alerts you can reach Jessica at [jhiemenz@nclc.org](mailto:jhiemenz@nclc.org).



*Jessica Hiemenz, conference and training coordinator, runs the NCLC webinar training series.*

### webinar email alerts

contact Jessica at  
[jhiemenz@nclc.org](mailto:jhiemenz@nclc.org).

## After Hours: NCLC Hosts Open House

This spring NCLC welcomed over 175 guests to our new home at 7 Winthrop Square for an Open House. The event was co-hosted by the Massachusetts Legal Assistance Corporation and the Interest on Lawyers' Trust Accounts program. Guests included colleagues from legal services programs across the state and many local donors and professionals who made the purchase of our building possible.

We look forward to hosting an event in our new home for out-of-town guests and supporters at the November 2010 Consumer Rights Litigation Conference in Boston!

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