The Supreme Court cited NCLC's treatise 
Fair Debt Collection (6th ed. 2008) three times 
in its majority opinion in Jerman v. Carlisle, 
McNickle, Rini, Kramer & Ulrich L PA. The 
case involved the bona fide error defense in 
the Fair Debt Collection Practices Act.

“The fact that the highest court in the land 
refers to our book in handing down a decision is 
yet another acknowledgement of the 
Center's expertise and credibility,” said Willard 
Ogburn, NCLC’s executive director. “For 27 
years this treatise has been the primary reference 
in the field and this Court decision adds to 
the legal community's appreciation and 
respect for NCLC’s treatises as important 
legal authority.”

In only its second decision interpreting the 
FDCPA, the Supreme Court cited the book as 
Hobbs, Fair Debt Collection, giving credit to 
Robert Hobbs, NCLC’s deputy director, as 
lead author. Although Hobbs is one of the 
country’s top experts in the field, he was quick 
to give additional credit to the wide-
spread team of researchers, authors, editors, 
proofreaders, indexers and others who helped 
to get this treatise and other consumer law 
manuals into the hands of lawyers across the 
country.

More on the Jerman decision is available 
In Volume 28 of our publication NCLC 
Reports Debt Collection and Repossessions 
Grant to Fund AG Attendance at NCLC Conference

NCLC is delighted to announce it has received a special grant from the Consumer Protection and Education Fund to fund the attendance of Assistant Attorneys Generals from all 50 states and the District of Columbia at the 2010 Consumer Rights Litigation Conference in Boston.

Support for AG attendance is vital this year given deep cuts to state training and travel budgets. In addition to the state AGs, NCLC expects the conference to attract close to 900 people, including consumer attorneys and advocates, policymakers, journalists, foundation officials, and others.

For a detailed explanation of all aspects of the Dodd-Frank Act relevant to a consumer law practice, go to www.nclc.org for a free download of a special double issue of NCLC REPORTS, July/August 2010.

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Americans for Fairness in Lending
Go Out with a Bang

In the wake of the major financial reform law, including the creation of a Consumer Financial Protection Bureau, Americans for Fairness in Lending (AFFIL) will be winding down its operations this fall.

“We have been fighting for stronger consumer protection laws and regulations for over three years,” said Sarah Barnes, AFFIL’s Director. “When we began, we never dreamed we would actually see the creation of a federal regulator wholly devoted to consumer finance. It’s a realization of our goals far beyond what we expected.”

AFFIL’s staff and board are clear that much work remains to be done, particularly as the CFPB begins to write regulations. Coalitions of organizations including NCLC and NACA will continue to fight these battles. Many of these groups began working together as AFFIL’s “Partners.”

“When we began forming AFFIL seven years ago, the nation was almost completely unaware of the impending foreclosure crisis,” said Cathy Lesser Mansfield, AFFIL’s board chair and a consumer law professor at Drake Law School. “Our initial goal was to raise awareness of predatory lending. As the entire world shifted under our feet, AFFIL adapted and became a leading advocate for stronger consumer protection policies, bringing organizations and individuals together both online and off.”

AFFIL began as a project of NCLC, and is currently housed in its Boston office. “AFFIL is leaving an impressive legacy for the consumer movement,” said Will Ogburn, secretary of the AFFIL board and executive director of NCLC. “From the many consumers who were educated and took action on their website, to their successful work on their Credit CARD Act of 2009, to their contributions to Americans for Financial Reform over the past year—these are just a few of the ways AFFIL has helped consumers over the years.”

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A New Era...
continued from Page 1

Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, the Home Affordable Modification Program, and other consumer laws, particularly changes related to mortgage originations and servicing. The Act also restricts federal preemption of state consumer law.

Boston, Massachusetts
November 11-14, 2010

Complete information is available at
www.nclc.org

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Inside Washington…….
continued from Page 1
plagued with mistakes, and abusive debt collectors waiting eagerly to chomp on the carcass. For years, we have complained to federal regulators. For years, we were warned that predatory mortgages were creating a looming crisis for American families. And although we won some significant changes and stopped some awful proposals, for years the need for fundamental reform fell on deaf ears.

After decades of growing abuse of consumers, Professor Elizabeth Warren boldly proposed a new consumer agency in 2007. The proposal won President Obama’s endorsement, and in July of this year he signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. It was a tough fight (and it isn’t over yet). Wall Street, the banking industry, the Chamber of Commerce, and other industry groups spent over $1 billion fighting and chipping away at the bill. They conceded scores of ridiculous clauses about how better protections against abusive lending and other financial products would create burdensome red tape for orthodontists, florists, and every corner of American life.

The Chambers’ ads were particularly galling. Earnest-looking butchers and bakers (no cardstock makers, but the implications were clear) knew too well how they let some of their customers “run a tab and pay the bill over time to make ends meet.” (What 1950s small town do they live in?) But an intrusive new bigger government agency could make it tough for them. Collect information about their customers and take away their choices. Even a reporter for American Banker said it was a “crushing blow” and that bankruptcy attorneys, professionally strapped, would be “gratified to be able to designate five very worthy organizations to receive $300,000 remaining in these cy pres...”

NCLC Helps Direct $300,000 Cy Pres Awards to Deserving Non-profits

After distribution of the settlement funds in Hood vs Santa Barbara Bank & Trust, NCLC and its co-counsel designated remaining funds in five organizations approved by the California Superior Court which, over the objections of a third-party defendant, were determined to provide services beneficial for the class or similarly situated persons.

“...we were pleased to successfully settle the Hood case and to distribute as much of the settlement funds to those class members we were unable to identify and locate. We were gratified be able to designate five very worthy organizations to receive $300,000 remaining from the settlement funds despite our diligent efforts,” said Stuart Rosman, NCLC litigation director. “NCLC itself is often a recipient of court awards and we know just how important and beneficial such unrestricted funds can be.”

Organizations receiving the court awards are:
- $75,000 - California Reinvestment Coalition
- $75,000 - Consumer Action
- $50,000 - Equal Justice Works
- $50,000 - Katharine and George Alexander Community Law Center
- $49,528 - Watonwanville Law Center

In total, through it all, the consumer agency was a cat with nine lives. It was making progress and then killed more times than it can count. After the House passed the bill, it languished in the Senate for months as the country debated health care and lobbyists kept working on the mere 41 votes needed to hold up a filibuster. We both needed and feared a deal with key Republicans, which came together, fell apart, and came back together again—at first with Senator Corker, then with Senator Shelby, and ultimately with Senators Scott Brown, Snowe and Pryor.

Some of the attacks took their toll. The Consumer Financial Protection Agency because the Consumer Financial Protection Bureau within the Federal Reserve. I was highly skeptical of such an arrangement when a key Senate staffer first quietly discussed it with a few of us. The idea was to give the swing Senate vote by nominally putting the bureau within the Fed but with enough guarantees of independence that it was effectively an independent agency. But we all feared that those guarantees would erode away. That did not happen. At the end of the day, all of the Wall Street and industry money in the world could not overcome the compelling fact that we needed change, and change in a big way. Business as usual was just too hard to defend.

In many ways, the fight has just begun. Instead of a battle in the halls of Congress, we will now be justling with a new group of lobbyists over what rules the CFPP should make to protect consumers. We’re making, with its focus on both broad policy and effective expertise of my colleagues at the Center.

The public will be as important as ever. We at NCLC, with our allies, can make detailed proposals for new consumer protections. But we need the backing of the consumers and consumer advocates who see the abuses on the ground and who can make the case to both the CFPP and the Congress that they will be watching. So let’s all take a moment to heave a sigh of relief, congratulate ourselves…and then get back to work.
NCLC Advocacy Scores RAL Victories
IRS Service Ends, RAL Players Leaving Business

N CLC applauded a recent announcement by the Internal Revenue Service that it will discontinue a service that helps banks make high-cost refund anticipation loans (RALs) to the working poor. The IRS has been providing a “debit indicator” which helps banks that partner with tax preparers to make loans based on the borrower’s expected tax refund. The debit indicator acts as a form of credit check, telling tax preparers whether a taxpayer’s refund will be paid or will be intercepted for government debts.

“We are pleased that the IRS has decided to stop aiding and abetting high-cost RALs that siphon off hundreds of millions in taxpayers’ hard-earned money and federal benefits intended to lift the working poor out of poverty,” said Chi Chi Wu, an attorney at NCLC.

NCLC has been urging the IRS to end the debt indicator since 2005, when it and Consumer Federation of America published a report entitled “Corporate Welfare for the RAL Industry: The Debt Indicator Since 2005.” The debt indicator was a huge player in the industry, having made as many as 1.5 million RALs to about 13,000 independent tax preparers in 2008.

• Santa Barbara Bank & Trust (SBIT) was forced out of the RAL business by its regulator, the Office of Comptroller of Currency (OCC). SBIT was the main RAL lender for Jackson Hewitt, providing about 75% of the RALs offered by that chain, as well as the lender for many independent preparers and small chains. NCLC and other advocates had repeatedly urged the OCC to take enforcement actions against banks that make RALs.

N CLC’s advocacy helped force several major RAL players out of the business:

• Giving way to pressure from NCLC and other consumer advocates, JP Morgan Chase announced that it is leaving the tax refund anticipation loan business. Chase was a huge player in the industry, having made as many as 1.5 million RALs to about 13,000 independent tax preparers in 2008.

• NCLC researchers reviewed hundreds of federal credit union reports estimating at 362 percent.

“Many genuine payday alternatives are in the market, but some products are nearly as bad as or even worse than payday loans,” said Leah Plunkett, the report’s co-author. “Cash advances offered to checking account holders by Wells Fargo Bank, U.S. Bank and Fifth Third Bank are payday loans, plain and simple—triple digit loans repaid on the next payday.”

The report cited genuine alternatives such as the Credit Builder loan from Alternatives Federal Credit Union in New York; affordable, interest-based overdraft lines of credit from some major banks; and affordable small loans offered by Progress Financiero, a community development financial institution.

NCLC Welcomes Judge Kenner to Its Staff

NCLC is pleased to announce that Carol J. Kenner has joined NCLC and is working on a variety of consumer law issues important to low-income people. Kenner served as a judge on the U.S. Bankruptcy Court for the District of Massachusetts for 18 years, four of which as Chief Judge. She also served on the Bankruptcy Appellate Panel for the First Circuit, including two years as Chief Judge.

“Judge Kenner has a passion for justice and a firm belief in the importance of consumer law,” said Willard Ogburn, NCLC executive director. “As a noted judge of the U.S. Bankruptcy Court she presided over the huge Sears case involving wholesale violations of the reaffirmation procedures, a case that captured front-page headlines around the country.”

In explaining her choice to join NCLC, Kenner said, “I’ve worked with NCLC staff on various issues for many years and have long recognized the high quality of its staff and its work on behalf of low-income people. NCLC is a national treasure.”

Although Kenner expects to be working on a whole gamut of consumer law issues, she’s quick to point out the “the bankruptcy process is what makes the American economy work. It’s a safety net for both individuals and entrepreneurs who are confronted by financial crisis.”

Prior to her appointment to the bench, Kenner practiced corporate reorganization law in New York and Boston. She lectures and participates regularly in education panels sponsored by the Federal Judicial Center, the American Bar Association, and numerous other organizations and law schools throughout the country. For six years she taught Bankruptcy Law as an adjunct professor at Suffolk University Law School. After retiring from the bench she was appointed as a Special Assistant Attorney General, specializing in mortgage foreclosures and bankruptcy.

Judge Carol J. Kenner

NCLC Issues Warning on ‘Alternatives’ to Payday Loans

A Challenge to Find Genuine and Safe Alternatives

Consumers should be wary of loans offered by banks and credit unions as “alternatives” to high-cost, short-term payday loans. As documented in NCLC’s report, “Stopping the Payday Loan Trap: Alternatives That Work, Ones That Don’t,” many alternative loan products are as dangerous as the payday loans they claim to replace.

“Too many providers of so-called payday loan alternatives hit consumers with some of the same onerous provisions that predatory lenders use to saddle unruly and vulnerable borrowers with loans they can’t afford to repay,” said Lauren Saunders, managing attorney of NCLC’s Washington office and principal author of the report.

“Payday loan alternatives that help consumers must be repayable affordably and on time, so that hard-pressed borrowers who need short term help can climb out of debt rather than get trapped in it,” Saunders said.

The report illustrates the challenge for low-income borrowers to find viable alternatives to payday lenders who rely on high costs (Annual Percentage rates in the triple or even quadruple digits), short terms, hidden payments, and cosmetic security provisions to force victims to roll over loans and pay astronomical fees.

Many genuine payday alternatives are in the market, but some products are nearly as bad as or even worse than payday loans.

LEAH PLUNKETT

NCLC researchers reviewed hundreds of small loans and found that even some federal credit union members are exploiting loopholes to offer payday loans at triple-digit interest rates. As of the time of the report’s publication in June 2010, California-based Kinecta Federal Credit Union was offering a 14-day loan with an annual percentage rate, or APR, that the report estimates at 362 percent. Other federal credit unions were offering expensive loans from E-AccessLoan.com, although it appears as if new loans from this source are no longer available.

“Many genuine payday alternatives are in the market, but some products are nearly as bad as or even worse than payday loans,” said Leah Plunkett, the report’s co-author. “Cash advances offered to checking account holders by Wells Fargo Bank, U.S. Bank and Fifth Third Bank are payday loans, plain and simple—triple digit loans repaid on the next payday.”

A Payday Loan by Any Other Name…

Lender and Name of Loan State Interest Fee Term APR with Fees

Wells Fargo Bank, Direct Deposit Advance National 0% $2 per $20 1-35 days 240-340%

Kinecta Federal Credit Union, (offered at Nix Check Cashing) California 15% $39.95 application fee 14 days 362%

Genuine Payday Loan Alternative

Lender and Name of Loan State Interest Fee Term APR with Fees

Alternative Federal Credit Union, Credit Builder Loan and Score Builder Loan New York 14.25% None 6 months 14.25%
Vigilante Car Seizures Run Amok
NCLC Calls upon States to Rein in Violence

According to a new report from NCLC, dozens of consumers, repossession agents and bystanders have been killed, injured or traumatized in self-help repossession around the country. They are carried out under state laws that allow automobile dealers and lenders to take cars without court action or the involvement of law enforcement. The report compiles and analyzes existing state laws and regulations on automobile repossessions, and catalogues recent repossessions that resulted in violence, fatalities, injuries, arrests or trauma. In fear of the incidents, repossession agents took cars containing children under the age of eight.

“Not a single state guarantees automobile owners a day in court before a repossession,” said John Van Alst, a lawyer for NCLC and principal author of the report. “Only a handful of states have even minimal consumer protections such as requiring that repossession agents have licenses, bonds or insurance.”

Millions of working and poor families depend upon automobiles for survival and daily life. When they need cars and lack access to conventional financing, they turn to buy here, pay here dealers. Those dealers too often rely on the threat of sudden and potentially violent repossessions to bully consumers into making payments.

That threat is real. Putoles, rifles, shotguns, knives, fists and automobiles are frequently wielded as weapons in confrontations arising out of self-help repossession. Since Jan. 1, 2007, those confrontations have resulted in at least six deaths, dozens of injuries and arrests and uncounted traumas.

“What we have now is vigilante repossession run amok,” said Rosemary Shahan, President of Consumers for Auto Reliability and Safety, a nonprofit organization that advocates for consumer safety and against auto fraud and abuse. “States need to adopt laws to rein in violence, kidnapping, and lawlessness.”

The report calls for each state to enact laws that would require secured lenders to obtain court orders or at least provide consumers minimal due process prior to seizing automobiles. In addition, states should require that such repossessions, when authorized by courts, be done by sheriffs, police or other law enforcement officials.

“Not in other areas of the law, such as evictions, self-help is generally no longer allowed in the interest of fairness and safety,” said Van Alst. “Until we do the same thing in auto repossession, people will continue to be hurt and killed.”

Not a single state guarantees automobile owners a day in court before a repossession.

JOHN VAN ALST

Social Security Benefits To Be Protected from Seizure
NCLC Hails Treasury Rule To Protect Seniors’ Assets

The proposed Treasury rule will protect the Social Security funds of seniors like Ruby F.

Ruby F. is 74-year-old resident of Arlington, Virginia. She is a grandmother living in low-income housing. She tried for years to pay off a Capitol One debt of about $4,000, incurred mostly due to medical costs. After Capitol One obtained a judgment against her, her bank account was frozen pursuant to a garnishment order. When her bank account was frozen, she borrowed money to pay her rent; she stopped the direct deposit of her Social Security check to her bank; she stopped buying medicines; and she started buying money orders to pay her bills. Money orders are difficult because she has physical difficulty getting around, and no transportation other than public. And, money orders drive up the cost of paying her bills. She is now too frightened of the banking system to trust it again. She keeps a few dollars in her account to keep it open, but is too afraid to use it.

The federal government’s push to require all recipients of Social Security and other benefits to receive payments by direct deposit will expose many seniors to predatory payday loans made by banks, according to a recent report by NCLC, “Runaway Bandwagon: How the Federal Government’s Push for Direct Deposit of Social Security Benefits Has Exposed Seniors to Predatory Bank Loans.”

Current law exempts Social Security, Veterans and other federal benefits from being taken through court orders obtained by creditors and debt collectors. However, banks regularly freeze accounts that contain such funds and charge hefty overdraft, bounced check, and garnishment fees to customers.

The proposed rules, which will apply to every financial institution in the nation, will require banks to identify accounts which in the past 60 days have had direct deposit of Social Security, veterans and other federal benefits. All of the federal benefits deposited during those 60 days will be protected from seizure, regardless of whether other, non-exempt funds have also been deposited or withdrawn from the account.

“We hope that a final rule, strengthened by the handful of improvements we and our many allies recommended in the comments we submitted—such as extending the lookback period to just over two months, will be published in the near future,” said Leah Plante, an attorney at NCLC. “Once a final rule is promulgated, we will engage in outreach efforts to inform attorneys and advocates who work with elders about the rule’s protections.”

Support for NCLC’s advocacy was provided in part by The Retirement Research Foundation.

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Direct Deposits Expose Social Security Recipients

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“Treasury must stop banks from making these high-cost, short-term loans to Social Security recipients,” said Margot Saunders, an author of the report. “These loans are only made because they are fully secured by a borrower’s next direct deposit of federal funds.”

“Runaway Bandwagon” spotlights account advance loan products—some with Annual Percentage Rates as high as 1,800 percent—that some banks offer to customers with checking accounts or prepaid debit cards. Banks help themselves to funds from customers’ accounts to repay loan principal and fees, so that these loans closely resemble both fee-based overdraft programs and payday loans.

Social Security fundswill be protected from seizure under the new rule established by the Treasury Department, which was enacted in response to the NCLC’s report on self-help repossessions. The rule will prevent banks from seizing Social Security funds of seniors who have arranged their paychecks to be deposited into their savings accounts.
NCLC Challenges Banks over Loan Modifications
Despite Making Payments, Permanent Mods are Denied

NCLC has filed four class action suits to challenge the way the nation’s major banks and mortgage servicers are implementing the Obama Administration’s foreclosure prevention initiative, the Home Affordable Modification Program. The lawsuits cite the failure of Wells Fargo Bank, Bank of America, Litton Loan Servicing and J.P. Morgan Chase Bank to honor their written agreements with homeowners seeking loan modifications.

The suits, filed in federal court in Massachusetts, charge that the lenders failed to keep the promises they made to homeowners to provide permanent loan modifications for homeowners who successfully completed their trial modifications.

“When a large financial institution promises to modify an eligible loan to prevent foreclosure, homeowners who live up to their end of the bargain expect that promise to be kept,” said Arielle Cohen, an attorney with NCLC. “After receiving temporary loan modifications and making their payments on time for months, many people are denied a permanent modification.”

We appreciate contributions from the generous individuals and firms listed below who have provided much welcomed support for NCLC advocacy and programs. NCLC is stronger and more effective with their help.

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Despite Making Payments, Permanent Mods are Denied

NCLC is litigating the HAMP cases with a team of lawyers including Gary Klein, Sherrnan Karnaugh, and Kevin Costello of Rodney Klein & Ryan in Boston and Michael Raabe of Neighborhood Legal Services in Lawrence, Mass.

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NCLC Challenges Banks over Loan Modifications Despite Making Payments, Permanent Mods are Denied

ARIELLE COHEN

NCLC’s Litigation Team: Attorneys: Stuart Rezman, Charles Delbaum, Arielle Cohen, and legal intern Shamie Beckley.

After receiving temporary loan modifications and making their payments on time for months, many people are denied a permanent modification.
Vigilante Car Seizures Run Amok
NCLC Calls upon States to Rein in Violence

According to a new study from NCLC, dozens of consumers, repossession agents and bystanders have been killed, injured or traumatized in self-help repossession across the country. They are carried out under state laws that allow automobile dealers and lenders to take cars without court action or the involvement of law enforcement. The report compiles and analyzes existing state laws and regulations on automobile repossession, and catalogues recent repossessions that resulted in violence, fatalities, injuries, arrests or trauma. In fear of the incidents, repo agents took cars containing children under the age of eight.

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That threat is real. Pistolets, rifles, shotguns, knives, fists and automobiles are frequently wielded as weapons in confrontations arising out of self-help repossession. Since Jan. 1, 2007, those confrontations have resulted in at least six deaths, dozens of injuries and arrests and uncounted traumas.

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In other areas of the law, such as evictions, self-help is generally no longer allowed to obtain court orders or at least provide consumers minimal due process prior to seizing automobiles. Judges are working to ensure the economic protection for seniors and others who depend on federal benefits to pay for food, medicine, and shelter.” Saunders added.

Social Security Benefits To Be Protected from Seizure
NCLC Hails Treasury Rule To Protect Seniors’ Assets

After extensive and persistent advocacy by NCLC, the U.S. Treasury Department has proposed rules that would prevent creditors and debt collectors from draining millions of dollars in fees from the Social Security benefits of seniors across the country.

“Once enacted, this regulation will stop banks from illegally freezing Social Security, SSI, and Veterans benefits to satisfy garnishment orders from debt collectors,” said Margot Saunders, an attorney with NCLC. “This is a critical protection for seniors and others who depend on federal benefits to pay for food, medicine, and shelter.” Saunders added.

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JOHN VAN ALST

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Federal Government’s Push for Direct Deposit Exposed Seniors to Predatory Bank Loans

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Social Security benefits will be protected from seizure. NCLC hails the Treasury Department’s proposed rule.

Ruby F. is a Social Security recipient who has been exposed to predatory bank loans.

The proposed Treasury rule will protect the Social Security benefits of seniors like Ruby F.

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Outlook 2010/2011 Subscription

The federal government’s push to require all recipients of Social Security and other benefits to receive payments by direct deposit will expose many seniors to predatory payday loans made by banks, according to a recent report by NCLC, “Runaway Bandwagon: How the Federal Government’s Push for Direct Deposit of Social Security Benefits Has Exposed Seniors to Predatory Bank Loans.”

“Treasury must stop banks from making these high-cost, short-term loans to Social Security recipients,” said Margot Saunders, an author of the report. “These loans are only made because they are fully secured by a borrower’s next direct deposit of federal funds.”

“Runaway Bandwagon” spotlights account advance loan products—some with Annual Percentage Rates as high as 1,800 percent—that some banks offer to customers with checking accounts or prepaid debit cards. Banks help themselves to funds from customers’ accounts to repay loan principal and fees, so that these loans closely resemble both fee-based overdraft programs and payday loans.
NCLC Advocacy Scores RAL Victories
IRS Service Ends,
RAL Players Leaving Business

NCLC applauded a recent announcement by the Internal Revenue Service that it will discontinue a service that helped banks make high-cost refund anticipation loans (RALs) to the working poor. The IRS has been providing a “debit indicator” which helps banks that partner with tax preparers to make loans based on the borrower’s expected tax refund. The debit indicator acts as a form of credit check, telling tax preparers whether a taxpayer’s refund will be paid or will be intercepted for government debts.

“We are pleased that the IRS has decided to stop aiding and abetting high-cost RALs that siphon off hundreds of millions in taxpayers’ hard-earned money and federal refund will be paid or will be intercepted for government debts,” said Chi Chi Wu, an attorney at NCLC.

NCLC has been urging the IRS to end the debt indicator since 2005, when it and Consumer Federation of America published a report entitled “Corporate Welfare for the RAL Industry: The Debt Indicator, IRS Subsidy, And Tax Fraud.” Their most recent criticism of the debt indicator was during the IRS Fraud. “Their most recent criticism of the debt indicator was during the IRS

RAL Players Leaving Business

• Santa Barbara Bank & Trust (SBIT) was forced out of the RAL business by its regulator, the Office of Comptroller of Currency (OCC). SBIT was the main RAL lender for Jackson Hewitt, providing about 75% of the RALs offered by that chain, as well as the lender for many independent preparers and small chains. NCLC and other advocates had repeatedly urged the OCC to take enforcement action against banks that make RALs.

• HSBC, the last of the major RAL lenders, only makes RALs through H&R Block. HSBC has indicated it will leave the business when its current contract with Block expires.

NCLC Welcomes Judge Kenner to Its Staff

NCLC is pleased to announce that Carol J. Kenner has joined NCLC and is working on a variety of consumer law issues important to low-income people. Kenner served as a judge on the US Bankruptcy Court for the District of Massachusetts for 18 years, four of which as Chief Judge. She also served on the Bankruptcy Appellate Panel for the First Circuit, including two years as Chief Judge.

“Judge Kenner has a passion for justice and a firm belief in the importance of consumer law,” said Willard Ogburn, NCLC’s executive director. “As a noted judge of the U.S. Bankruptcy Court she presided over the huge Sears case involving wholesale violations of the reaffirmation procedures, a case that captured front-page headlines around the country.”

In explaining her choice to join NCLC, Kenner said, “I’ve worked with NCLC staff on various issues for many years and have long recognized the high quality of its work and its work on behalf of low-income people. NCLC is a national treasure.”

Although Kenner expects to be working on a whole gamut of consumer law issues, she’s quick to point out the “the bankruptcy process is what makes the American economy work. It’s a safety net for both individuals and entrepreneurs who are confronted by financial crisis.”

Prior to her appointment to the bench, Kenner practiced corporate reorganization law in New York and Boston. She lectures and participates regularly in education panels sponsored by the Federal Judicial Center, the American Bar Association, and numerous other organizations and law schools throughout the country.

For six years she taught Bankruptcy Law as an adjunct professor at Suffolk University Law School. After retiring from the bench she was appointed as a Special Assistant Attorney General, specializing in mortgage foreclosures and bankruptcy.

NCLC Issues Warning on ‘Alternatives’ to Payday Loans

A Challenge to Find Genuine and Safe Alternatives

Consumers should be wary of loans offered by banks and credit unions as “alternatives” to high-cost, short-term payday loans. As documented in NCLC’s report, “Stopping the Payday Loan Trap: Alternatives That Work, Ones That Don’t,” many alternative loan products are as dangerous as the payday loans they claim to replace.

“Too many providers of so-called payday loan alternatives hit consumers with some of the same onerous provisions that predatory lenders use to saddle untrustworthy and vulnerable borrowers with loans they can’t afford to repay,” said Lauren Saunders, managing attorney of NCLC’s Washington office and principal author of the report.

“Payday loan alternatives that help consumers must be repayable affordably and on time, so that hard-pressed borrowers who need short term help can climb out of debt rather than get trapped in it,” Saunders said.

The report illustrates the challenge for low-income borrowers to find viable alternatives to payday lenders who rely on high costs (Annual Percentage rates in the triple or even quadruple digits), short terms, hidden payments, and cosmetic security provisions to force victims to roll over loans and pay astronomical fees.

Many genuine payday alternatives are in the market, but some products are nearly as bad as or even worse than payday loans.

LEAH PLUNKETT

NCLC researchers reviewed hundreds of small loans and found that even some federal credit union loans are exploiting loopholes to offer payday loans at triple-digit interest rates. As of the time of the report’s publication in June 2010, California-based Kinecta Federal Credit Union was offering a 14-day loan with an annual percentage rate, or APR, that the report estimates at 362 percent. Other federal credit unions were offering expensive loans from E-AccessLoan.com, although it appears as if new loans from this source are no longer available.

“Many genuine payday alternatives are in the market, but some products are nearly as bad as or even worse than payday loans,” said Leah Plunkett, the report’s co-author. “Cash advances offered to checking account holders by Wells Fargo Bank, U.S. Bank and Fifth Third Bank are payday loans, plain and simple—triple digit loans repaid on the next payday.”

The report cited genuine alternatives such as the Credit Builder loan from Alternatives Federal Credit Union in New York; affordable, interest-based overdraft lines of credit from some major banks; and affordable small loans offered by Progreso Financiero, a community development financial institution in New York.

A Payday Loan by Any Other Name…..

<table>
<thead>
<tr>
<th>Lender and Name of Loan</th>
<th>State</th>
<th>Interest</th>
<th>Fee</th>
<th>Term</th>
<th>APR with Fees</th>
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<tbody>
<tr>
<td>Wells Fargo Bank, Direct Deposit Advance</td>
<td>National</td>
<td>0%</td>
<td>$2 per $20</td>
<td>1-35 days</td>
<td>240-340%</td>
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<tr>
<td>Kinecta Federal Credit Union, (offered at Nix Check Cashings)</td>
<td>California</td>
<td>15%</td>
<td>$39.95 application fee</td>
<td>14 days</td>
<td>362%</td>
</tr>
</tbody>
</table>

Genuine Payday Loan Alternative

<table>
<thead>
<tr>
<th>Lender and Name of Loan</th>
<th>State</th>
<th>Interest</th>
<th>Fee</th>
<th>Term</th>
<th>APR with Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alternative Federal Credit Union, Credit Builder Loan and Score Builder Loan</td>
<td>New York</td>
<td>14.25%</td>
<td>None</td>
<td>6 months</td>
<td>14.25%</td>
</tr>
</tbody>
</table>
Summer Interns Provide Valuable Help to NCLC

Each year NCLC enrolls a group of well-qualified law students to work on consumer law research and other projects. This summer NCLC welcomed interns Shamin Beekly, Amanda Howell, Ana Lucia Hurtado and Roohan Grover (New Sector Alliance). Summer Fellow, part of AmeriCorps.

For the first time this year, name-fellows also added strength to NCLC’s summer intern program:

- Timothy Eble Fellowship: Rachel Rothman is this year’s Eble Fellow. A third year student at Western New England Law School, Rothman worked on a number of projects including research on credit reporting agencies. The Eble fellowship is made possible through the generous support of Timothy E. Eble, Mount Pleasant, S.C.

- Mikels Fellowship: This year’s Mikels Fellow is Pun Winston, a second year law student at William and Mary Law School. The fellowship was established by Philip J. Hendel of Hendel & Collins, PC and the American College of Bankruptcy to honor Richard E. Mikels, chairman of Marlin Levison bankruptcy and restructuring section, for his tenure as First Circuit Chair for the American College of Bankruptcy. Winston assisted NCLC’s bankruptcy staff with research on bankruptcy issues.

Inside Washington:....continued from Page 1

plagued with mistakes, and abusive debt collectors waiting eagerly to chomp on the carcass. For years, we have complained to federal regulators. For years, we were aware that predatory mortgages were creating a looming crisis for American families. And although we won some significant changes and stopped some awful proposals, for years the need for fundamental reform fell on deaf ears.

After decades of growing abuse of consumers, Professor Elizabeth Warren boldly proposed a new consumer agency in 2007. The proposal won President Obama’s endorsement, and in July of this year he signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. It was a tough fight (and it isn’t over yet). Wall Street, the banking industry, the Chamber of Commerce, and other industry groups spent over $1 billion fighting and chipping away at the bill. They concocted scores of ridiculous stories about how better protections against abusive lending and other financial products would create burdensome red tape for orthodoxists, florists, and every corner of American life.

The Chambers’ ads were particularly galling. Earnest-looking butchers and bakers (no candid pitch makers, but the implication was clear) knew too much when they let some of their customers “run a tab and pay the bill over time to make ends meet.” (What 1950s small town do they live in?) But an intrusive new national government agency would make it tough for them to make, collect information about their customers and take away their choices. Even a reporter for American Banker thought the ad reviled the “health care mysteries” over death panels.

Through it all, the consumer agency was a cat with nine lives. It was making progress and then killed more times than it can count. After the House passed the bill, it languished in the Senate for months as the country debated health care and lobbying kept working on the mere 41 votes needed to hold up a filibuster. We both needed and feared a deal with key Republicans, which came together, fell apart, and came back together again—at first with Senator Corker, then with Senator Shelby, and ultimately with Senators Scott Brown, Snowe and Pryor.

Some of the attacks took their toll. The Consumer Financial Protection Agency because the Consumer Financial Protection Bureau within the Federal Reserve. I was highly skeptical of such an arrangement when a key Senate staffer first quietly discussed it with a few of us. The idea was to give the swing Senate covers by nominally putting the bureau within the Fed but with enough guarantees of independence that it would be an effective independent agency. But we all feared that those guarantees would erode away.

That did not happen. At the end of the day, all of the Wall Street and industry money in the world could not overcome the compelling fact that we needed change, and change in a big way. Business as usual was just too hard to defend.

In many ways, the fight has just begun. Instead of a battle in the halls of Congress, we will now be Coalition of lobbyists over what rules the CFPB should make to protect consumers. It’s making, with its focus on broad policy questions and picky legal details plays to NCLC’s strengths and the incredible expense of any colleagues at the Center. Though the arena has shifted from the public space of Congress to an agency that do not depend on votes, the loud voice of the public will be as important as ever. We at NCLC, with our allies, can make detailed proposals for new consumer protections. But we need the backup of the consumers and consumer advocates who see the abuses on the ground and who can make the case to both the CFPB and the Congress that it will be watching. Let’s all take a moment to heave a sigh of relief, congratulate ourselves... and then get back to work.

Philips Directs Record Number of Cy Pres to NCLC

Back in the mid-1990s David J. Philips directed one of our very first pres to the Center. (Our records are too unclear to definitely call it the first court award, but we believe it may be.) Since that time Philips has directed 50+ 50-cy pres to NCLC!

“We’re incredibly grateful to Dave for his pioneering approach to supporting NCLC through cy pres,” said William P. Ogburn, NCLC executive director. “Over the years cy pres have become a major funding source for NCLC and by example Dave has led the way.

“From time to time, defendants have objected to NCLC as a recipient, but Dave has persisted until NCLC is awarded it. We’re grateful for his continued persistence.”

Philips, who has been practicing law since 1987, is recognized as an expert in the Fair Debt Collection Practices Act and is a frequent speaker on it at NCLC.

NCLC Helps Direct $300,000 Cy Pres Awards to Deserving Non-profits

After distribution of the settlement funds in Hood vs Santa Barbara Bank & Trust, NCLC and its co-counsel designated remaining funds to five organizations approved by the California Superior Court which, over the objections of a third party defendant, were determined to provide services beneficial for the class or similarly situated persons.

“We were pleased to successfully settle the Hood case and to distribute as much of the settlement funds to those class members who were unable to identify and locate. We were gratified be able designate five worthy organizations to receive $300,000 remaining from the settlement funds despite our diligent efforts,” said Stuart Rossman, NCLC litigation director. “NCLC itself is often a recipient of court awards and we know just how important and beneficial such unrestricted funds can be.”

Organizations receiving the court awards are:

- $75,000 - California Reinvestment Coalition
- $75,000 - Consumer Action
- $50,000 - Equal Justice Works
- $50,000 - Katharine and George Alexander Community Law Center
- $49,528 - Watsonville Law Center

Plaintiffs in Hood had applied for Refund Anticipation Loans from Santa Barbara Bank through Jackson Hewitt offices that prepared their tax returns. Santa Barbara did not give them RALs, but collected their funds, without proper notice according to the Plaintiffs, to pay alleged debts Plaintiff owed to one of the Cross Defendants (other RAL providers) or Jackson Hewitt. Co-counsel in the case were The Sturdevant Law Firm, the Equal Justice Foundation, Graham & Graham, and the Law Office of Ronald L. Burge who provided class representation in the private action against Jackson Hewitt in Ohio.

Cy Pres DONORS

JUNE 2009-AUGUST 2010

We appreciate those who have supported NCLC by directing cy pres to the Center.

Paul Aron
Stacy A. Mitchell
Nancy Barron
Leonard A. Bennett
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Scott C. Borson
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Ronald Wilson
Joel O. Wooten

Cy Pres DONORS
Grant to Fund AG Attendance at NCLC Conference

NCLC is delighted to announce it has received a special grant from the Consumer Protection and Education Fund to fund the attendance of Assistant Attorneys Generals from all 50 states and the District of Columbia at the 2010 Consumer Rights Litigation Conference in Boston.

Support for AAG attendance is vital this year given deep cuts to state training and travel budgets. In addition to the state AAGs, NCLC expects the conference to attract close to 900 people, including consumer attorneys and advocates, policymakers, journalists, foundation officials, and others.

A New Era...
continued from Page 1

Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, the Home Affordable Modification Program, and other consumer laws, particularly changes related to mortgage originations and servicing. The Act also restricts federal preemption of state consumer law.

For a detailed explanation of all aspects of the Dodd-Frank Act relevant to a consumer law practice, go to www.nclc.org for a free download of a special double issue of NCLC REPORTS, July/August 2010.

Americans for Fairness in Lending

In the wake of the major financial reform law, including the creation of a Consumer Financial Protection Bureau, Americans for Fairness in Lending (AFFIL) will be winding down its operations this fall.

“We have been fighting for stronger consumer protection laws and regulations for over three years,” said Sarah Bryce, AFFIL’s Director. “When we began, we never dreamed we would actually see the creation of a federal regulator wholly devoted to consumer finance. It’s a realization of our goals far beyond what we expected.”

AFFIL’s staff and board are clear that much work remains to be done, particularly as the CFPB begins to write regulations. Coalitions of organizations including NCLC and NACA will continue to fight these battles. Many of these groups began working together as AFFIL’s “Partners.”

“When we began forming AFFIL seven years ago, the nation was almost completely unaware of the impending foreclosure crisis,” said Cathy Lesser Mansfield, AFFIL’s board chair and a consumer law professor at Drake Law School. “Our initial goal was to raise awareness of predatory lending. As the entire world shifted under our feet, AFFIL adapted and became a leading advocate for stronger consumer protection policies, bringing organizations and individuals together both online and off.”

AFFIL began as a project of NCLC, and is currently housed in its Boston office. “AFFIL is leaving an impressive legacy for the consumer movement,” said Will Ogburn, secretary of the AFFIL board and executive director of NCLC. “From the many consumers who were educated and took action on their website, to their successful work on their Credit CARD Act of 2009, to their contributions to Americans for Financial Reform over the past year—these are just a few of the ways AFFIL has helped consumers over the years.”

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I pledge a gift of $__________payable over_____years.

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OR MAKE A DONATION ON OUR SECURE WEBSITE — www.nclc.org
Supreme Court Cites NCLC Treatise


“The fact that the highest court in the land refers to our book in handing down a decision is yet another acknowledgement of the Center’s expertise and credibility,” said Willard Ogburn, NCLC’s executive director. “For 27 years this treatise has been the primary reference in the field and this Court decision adds to the legal community’s appreciation and respect for NCLC’s treatises as important legal authority.”

In its second decision interpreting the FDCPA, the Supreme Court cited the book as Hobbs, Fair Debt Collection, giving credit to Robert Hobbs, NCLC’s deputy director, as lead author. Although Hobbs is one of the country’s top experts in the field, he was quick to give additional credit to the wide-spread team of researchers, authors, editors, proofreaders, indexes and others who helped to get this treatise and other consumer law manuals into the hands of lawyers across the country.

More on the Jerman decision is available in Volume 28 of our publication NCLC Reports Debt Collection and Repossessions Edition 2010.

Inside Washington

by Lauren Saunders, Managing Attorney in NCLC’s Washington office

Consumers will soon have a new sheriff in Washington to protect them, backed up by a considerable posse. Finally, the creation of the Consumer Financial Protection Bureau means that consumer protections will come out from under the thumbs of bank regulators.

For years, our clients have struggled with mortgages designed to fail, credit cards check full of tricks and traps, debit cards designed to trigger overdraft fees, payday loans that would make loan sharks blush, student loans that crush young adults as they start their careers, credit reports taken into account.

Robert Hobbs
NCLC’s Deputy Director

NCLC scores RAL victories

The historic establishment of a Consumer Financial Protection Bureau sends a clear message that the era of deregulation is finally over,” he said. “It is gratifying to have a regulator that will put consumers first and work vigilantly to stop the predatory practices that helped bring down our entire economy.”

NCLC, working with a broad coalition of consumer organizations, overcame intense opposition from the banking industry and its well-financed lobbyists. As the mammoth bill was drafted and amended, policymakers turned to NCLC again and again for our deep expertise on a wide range of consumer issues and to ensure that the unique needs of low-income consumers were taken into account.

In addition to creating the CFPB, the Dodd-Frank Act makes scores of changes to the Truth in Lending Act, the}

LANDMARK DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT IS SIGNED INTO LAW

A New Era for Consumer Protection

Marking the culmination of a long, hard fought battle, on July 21, 2010 President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act, the most sweeping victory for consumer rights in decades.

“This is an extraordinary victory for consumers, especially for low-income people who are most often targeted for the most abusive financial products,” said Willard P. Ogburn, executive director of NCLC. “The historic establishment of a Consumer Financial Protection Bureau sends a clear message that the era of deregulation is finally over,” he said. “It is gratifying to have a regulator that will put consumers first and work vigilantly to stop the predatory practices that helped bring down our entire economy.”

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In addition to creating the CFPI, the Dodd-Frank Act makes scores of changes to the Truth in Lending Act, the