

Consumer Impact

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YOUR NATIONAL CONSUMER LAW CENTER NEWSLETTER

Federal Regulators Take Steps on Foreclosure Crisis Why NCLC Says Measures Are Not Enough; We Need Strong National Standards for Mortgage Servicers

The scandalous behavior of mortgage servicers—the banks and other companies that collect homeowners’ mortgage payments as well as handle consumer inquiries, loan modifications and foreclosures—is at the center of the national foreclosure crisis. Millions of homeowners were victimized by the abusive practices of servicers whose staff are trained for collection activities rather than foreclosure prevention, whose infrastructure cannot handle the volume and intensity of demand, and whose business records are a mess.

In February, the nation’s five largest mortgage servicers agreed to a \$25 billion settlement with a coalition of state Attorneys General and the federal government. The settlement resolved the investigation of the “robo-signing” scandal in which servicer employees routinely

forged or rubber stamped foreclosure documents and engaged in other illegal activities.

“This settlement is just a start toward filling the gap left by the failure of the U.S. banking agencies and Congress to address

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Alys Cohen, Staff Attorney

It is inexplicable that federal regulators continue to give servicers nearly unlimited discretion to foreclose instead of modifying, even when both the homeowner and the investor would benefit.

ALYS COHEN

Payday is not just a candy bar

NCLC shines a light on 300 Percent Bank Payday Loans

Banks big and small are plunging into the payday loan business, offering short-term advances until the borrower’s next pay or benefits check, at rates that add up to a 300% annual percentage rate (APR) or higher. Regions Bank is the latest big bank to start offering payday loans, joining Wells Fargo, U.S. Bank and Fifth Third. Some banks are also facilitating loans on prepaid cards in states where

payday loans are illegal. Both the Consumer Financial Protection Bureau (CFPB) and the federal bank regulator, the Office of the Comptroller of the Currency (OCC), are looking at banks’ involvement with payday loans, and NCLC has urged them to cast a critical eye.

“Banks simply should not be in the payday loan business,” said Lauren Saunders,

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Consumer Impact

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IT'S CRIMINAL: RAMPANT BACKGROUND CHECK ERRORS COST WORKERS' JOBS AND SKIRT FEDERAL LAW

NCLC Publishes Report and Urges Action to Hold Companies Accountable

Since September 11, 2001, there has been an explosion in employer-initiated criminal background checks for job applicants, yet many reports are riddled with errors.

This April, NCLC published *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*. The report finds that an industry-wide lack of accountability and incentives to cut corners mean that tens of millions of workers may pay for these third-party errors with their jobs, while employers waste money and miss out on hiring qualified employees.

“Background screening companies routinely cut corners to improve their profits, and then they wipe their hands of any responsibility for producing an inaccurate or misleading report that can cost a worker his or her job,” says NCLC Attorney Persis Yu and co-author of the report. “Federal regulatory agencies and states should rein in the Wild West of the background screening industry by holding companies accountable.”

NCLC’s research reveals that criminal background screening companies’ reports routinely:

- Mismatch people (i.e. a person with no criminal background with someone who has a record; especially problematic for people with common names);
- Omit crucial information about a case (i.e. a person is arrested but then found innocent);
- Reveal sealed or expunged information (i.e. a juvenile offense);
- Provide misleading information (i.e. a single charge listed multiple times); and
- Misclassify offenses (i.e. reporting a misdemeanor as a felony).

Many of these errors can be attributed to common practices by background

Background screening companies generate billions of dollars in revenue for producing sloppy work, while consumers are left handcuffed with little recourse to challenge and correct misleading or incorrect personal information. Where’s the justice in that?

PERSIS YU

screening companies, such as:

- Failing to verify information obtained through subcontractors and other faulty sources;
- Using unsophisticated matching criteria;
- Failing to use all available information to prevent a false positive match;
- Lacking understanding about state specific criminal justice procedures; and
- Retrieving information through bulk record disseminations and failing to routinely update their databases.

About 93 percent of employers conduct criminal background checks on some applicants, while 73 percent of employers conduct checks on all applicants, according to a 2010 survey by the Society for Human Resource Management. Yet there are no licensing requirements, and there is no system for registration of background checking companies. Anyone with a computer and access to records can start a business; the total number of companies is unknown.

The National Association of Professional Background Screeners (the industry trade organization) has a voluntary accreditation program that contains some simple procedures (many of which are legally required) that background checking companies can take to enhance the quality of their information. Unfortunately, few companies actually are willing to commit

to even the limited recommendations of their own trade association.

“Working without adequate federal supervision, many commercial background screening companies have produced poor quality reports that, in the most extreme cases, have shut people from their careers,” notes co-author Sharon Dietrich, who is managing attorney in Community Legal Services of Philadelphia’s Employment and Public Benefits Units.

WHAT CAN WE DO ABOUT THIS?

- NCLC staff will pressure federal regulatory agencies and states to use their authority to clean up industry-wide problems, suggesting how they can best accomplish this.
- NCLC will also be contacting the Federal Trade Commission (FTC) about investigating major commercial background screening companies for common FCRA violations and large, nationwide employers for compliance with federal requirements for users of consumer reports for employment purposes.
- State legislatures and courts also have a role. NCLC is pleased to offer assistance for state as well as federal activities that promote fairness in the area of criminal background checks.

We hope that the intense spotlight on this issue will result in much needed regulation of the industry.

National Impact: In late April, the U.S. Equal Employment Opportunity Commission updated—for the first time in 25 years—its guidance to employers regarding use of arrest and conviction records in employment decisions. A Reuters article noted that “The agency was particularly concerned that with the proliferation of background checks by the growing, multi-billion-dollar industry that conducts them, a high error rate could ruin job prospects for many, including minorities” and cited NCLC’s report and findings.

State Impact: As we were going to press, we received a copy of State Representative Liz Malia’s recent comments to the Massachusetts Department of Criminal Justice pertaining to its new Information Services Regulations. She cites NCLC’s Broken Records report and expresses her concern about the role of consumer reporting agencies (i.e. private background checking companies). In her letter, Representative Malia also cites a number of recommendations for better regulations and stronger enforcement, which are in line with the NCLC Report.

Why Consumer Impact?

A NOTE FROM THE EXECUTIVE DIRECTOR

What's in a name? For an organization and its newsletter, it suggests who we are, what we do, why we do it and how successfully it all happens. We have renamed NCLC's newsletter *Consumer Impact*.

This biannual newsletter—and quarterly accompanying e-blasts with the same title—is intended to speak especially to those who support our work as friends and donors, both individually and through cy pres and other awards. We do this to *thank you* for your support and, of equal importance, to give you a brief look at the impact of the work you are making possible. We feel very good about our collaborative work and the impact that it has. Your support makes it possible—enabling NCLC attorneys every day to promote essential rules and legislation, write and update our publications, and support attorneys in the field through training and other activities. In fact, your support primarily underwrites the most essential of our advocacy.

Our work impacts the variety of issues crucial to consumers. In this issue, we highlight payday loans, background checks,



Willard P. Ogburn presents the 2011 Countryman Award to Carlene McNulty, Senior Attorney, North Carolina Justice Center.

mortgage lending and foreclosure, bankruptcy, debt collection and student loans. We thank those who have supported our work with cy pres awards, especially in these times of difficulty for consumers, attorneys and NCLC itself (we thank individual donors each fall). And we list what NCLC offers through training and conferences, including NCLC webinars.

Thank you . . . for all you do for your clients, and for all you do every day in supporting and promoting economic

justice. Every case you win (and some that you lose) and every donation you make brings us closer to a fair society. And thank you for supporting the National Consumer Law Center in all the ways you do, whether it is by making a donation now, letting us know about other potential friends, supporting scholarships so that others may attend our conferences, or identifying foundations that should know more about NCLC. You also support us by attending and speaking at our training opportunities and conferences. We appreciate deeply engaging in this work with you.

Together, we have a real impact on our country and the world. I am proud of the work we do, what it represents and what it accomplishes. We are all so busy that we do not stop very often to appreciate the work and feel the pride. Take a moment now.

I look forward to greeting those of our friends who are able to attend the Consumer Rights Litigation Conference this coming fall in Seattle, a great city with a great Host Committee, led by David Leen. It will be great to speak with and see other friends and colleagues on other occasions.

WILLARD P. OGBURN

There are few people in history who have left such a deep and wide mark on legal services for the poor.

WILLARD P. OGBURN

It is with great sadness that we share the news of the passing of John G. Brooks, former member of NCLC's Board of Directors and champion of our mission. John's career as an advocate for legal services spanned 60 years. During that time he was president of Greater Boston Legal Services and the National Legal Aid & Defender Association.

He was sworn in as a board member of the Legal Services Corporation after being appointed by President Clinton, at the age of 80. "There are few people in history who have left such a deep and

wide mark on legal services for the poor," said Willard P. Ogburn, NCLC's executive director." He will be sorely missed.



John G. Brooks

ADVOCATE SPOTLIGHT: Protecting the Student as Consumer

Deanne Loonin: NCLC Attorney & Director of NCLC's Student Loan Borrower Assistance Project and **Persis Yu:** NCLC Attorney for the Student Loan Borrower Assistance Project and other consumer issues

NCLC's Student Loan Borrower Assistance Project provides information about student loan rights and responsibilities for borrowers and advocates. The project also seeks to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens and make loan repayment more manageable. We sat down with NCLC attorneys Deanne Loonin and Persis Yu to find out how they are combining legal expertise, critical analysis and compassionate concern for low-income borrowers as they steer the student loan project towards more assistance and protections for borrowers.

Q: What drew your attention to this issue, especially as it affects low-income borrowers?

A: Loonin: Higher education is a major driver of economic mobility in our country. Theoretically, the main goal of federal financial aid is promoting equal access to education. Unfortunately, we have not come anywhere close to meeting this goal as the gap in college completion for lower-income and higher-income individuals has actually grown over time.

I have been working on these issues for a long time because I believe in making the promise of higher education more of a reality, particularly for low-income and non-traditional students. I also strongly believe that students who do not succeed the first time around should have another chance to go back to school if they choose, and in any case to live their lives without crushing student loan debt burdens.

Q: The NCLC Student Loan Borrower Assistance Project receives information and feedback from thousands of students each year. From these stories, what themes, needs and lessons stand out?

A: Yu: Unfortunately, we hear a lot of frustration and confusion from borrowers. Student loans can be very complicated. Furthermore, many borrowers are told contradictory and/or incorrect information by their loan servicers or debt collectors. Because of this, one of our main goals is to advocate for the consistent and competent application of laws and regulations.

Q: In February this year, you both convened a workshop in Los Angeles to train

California advocates on student debt issues for nontraditional students. Please tell us about these students and advocates, and how their experiences motivate you to work on behalf of low-income borrowers.

A: Loonin and Yu: Much of the attention on student loan issues has focused on experiences of traditional students, generally those in their 20s attending four year colleges. This is an important constituency who are suffering in the current economic downturn. Yet policymakers and media tend to ignore the majority of students who are "non-traditional," generally financially independent adults over 25.

Our goal with the L.A. meeting and similar events is to improve coordination and advocacy among those working with these non-traditional and low-income borrowers. Policymakers must hear these voices too. Another goal is to train advocates so that there are more legal assistance resources available for financially distressed student loan borrowers.

Q: What are your main goals for the Student Loan Borrower Assistance Project in the next 12 to 24 months?

A: Loonin: We have a number of priorities—mainly to provide better options for borrowers struggling with student loan debt, to help make existing options work better in practice, and to expand the safety net for the most vulnerable borrowers. We work on these goals in a variety of ways, including limited direct client representation, litigation, trainings, legislative and regulatory policy advocacy and through publications and reports.

Q: How is NCLC changing the student loan borrowing landscape for low-income borrowers?

A: Yu: One of the goals of NCLC's Student Borrower Assistance Project is to increase the resources available for financially distressed student loan borrowers. We do this by producing NCLC's *Student Loan Law Manual* and by training legal advocates across the country to provide direct representation to borrowers. Because many borrowers do not have access to legal assistance, we also provide self-help materials on the website.

The other goal of the Project is to work



Deanne Loonin (left) and Persis Yu.

towards increasing the visibility of non-traditional students and the issues that affect them. We do this through our reports and policy advocacy. Over the past several months, Deanne has been actively involved as an official participant in negotiated rulemaking with the U.S. Department of Education to draft new regulations that will better serve low-income borrowers.

Q: What have been your biggest challenges in representing low-income and non-traditional students?

A: Loonin: It is an uphill battle in many ways. It is hard to get policymakers, media and the general public to focus on issues that primarily impact low-income students. It is also hard to fight powerful industries, including student lenders and for-profit schools. But we keep fighting because we know we can make a difference and have made a difference for individual borrowers.

Learn more:

- Visit the Project website for borrowers with student loans who want to know their options and rights, or sign up for e-mail updates addressing related hot topics: www.studentloanborrowerassistance.org
- Purchase the *Student Loan Law Manual*: <http://shop.consumerlaw.org/>
- Read an Equal Justice Works interview with Deanne at: www.equaljusticeworks.org/node/2607

Deanne Loonin is an attorney with NCLC and the director of NCLC's Student Loan Borrower Assistance Project.

Persis Yu is an attorney at NCLC and works in the Student Loan Borrower Assistance Project and on other consumer advocacy issues.

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*Stuart Rossman,
NCLC Director of Litigation*

Rossman Speaks at Impact Fund Conference

“Impact” is the core of this newsletter, and the aftermath of *Wal-Mart v. Dukes* lawsuit was the focus of The Impact Fund’s 10th Annual Class Action Conference in Berkeley, California this past March. NCLC Director of Litigation, Stuart Rossman, was a speaker who joined three other panelists in the opening roundtable on “Class Certification Strategies after Dukes.” Also, Mark Chavez, NCLC Board and Partners Council member, participated on a panel entitled “The Implications of Downsizing Class Actions.”

The Class Action Conference brings together practitioners from both the private and non-profit bar who are prosecuting class actions in the public interest. The goal this year was to respond to the Supreme Court’s assault on class actions with the development of strategies for future success. The conference succeeded in highlighting the effect of judicial changes in a variety of practice areas, helping move attendees out of their respective silos and into more flexibility as to cases promising success. Many of the participants will gather again this year at NCLC’s Consumer Rights Litigation Conference in Seattle from October 25 – 28 with a focus on the Class Action Symposium. (See first announcement of this conference on page 8).

NCLC Advocates for Low-Income Student Loan Borrowers in Washington, D.C.

Student Loan Borrowers Need Bankruptcy Rights.

This past March, NCLC attorney Deanne Loonin testified before the U.S. Senate Committee on Judiciary, Subcommittee on Administrative Oversight and the Courts, on the “Looming Student Debt Crisis: Providing Fairness for Struggling Students.”

One of six witnesses before the panel, Deanne emphasized that it’s critical to restore student borrowers’ bankruptcy rights, which were eliminated even for private student loans in the 2005 national bankruptcy law overhauls. Currently student loan debt can only be discharged if the debtor can prove that repayment of the loan would result in “undue hardship.” New legislation introduced last year in the U.S. House and Senate would allow private student loan debt to be discharged in bankruptcy.

Borrowers In Default Need Flexibility.

Loonin also represented students during the Department of Education’s (ED) negotiated rulemaking sessions from January through March this year.

The sessions addressed problems in repayment and other options to assist borrowers. Given the huge run-up in student loan debt nationwide, students

are facing more and greater difficulties repaying their loans. Currently, the amount of student loan debt in the United States is more than \$1 trillion—exceeding the total amount of credit card debt and automobile loans.

“Negotiated rulemaking to guide policy implementation does not happen very often,” said Loonin. “So NCLC was very pleased to have participated in this process and highlight the needs of low-income borrowers.”

On the table during the rulemaking negotiations were 25 student loan regulatory issues, on which the committee members reached consensus as required by federal guidelines. Now the Department is drafting proposed rules to be published for comment before promulgation of final rules.

Loonin’s focus was on protecting and promoting low-income borrowers’ interests and quality of life, which can be affected by student aid availability, repayment, forgiveness and relief.

New rules governing student loan debt will not go into effect until July 2014—after the Department issues two separate notices of proposed rules for comment. NCLC will remain involved in the process to continue advocating for low-income students and families.

FEEDBACK FROM ATTENDEES AT NCLC’S 2011 CONSUMER RIGHTS LITIGATION CONFERENCE

- “As always, the conference rejuvenates & reinvigorates my passion for our work.”
- “It pays for itself in the improved ability to handle more cases and creatively make affirmative claims in my cases.”

Rothburd and Team Allocate Tampa cy pres Award to NCLC

Long Battle Yields Good Results

The question is not *“Why give a cy pres to NCLC?”*

The question is:

“Who would I give a cy pres rather than NCLC?”

CRAIG ROTHBURD

Attorney Craig Rothburd took on an auto dealer case in Tampa in 1999: *Gilley v. Ernie Haire Ford*. Ernie Haire had a large single dealership with multiple locations that included new cars and used car sales and sales of motorcycles. By the time the case settled, on the steps of the courthouse, Craig was joined by co-counsel, J. Daniel Clark. Other team members included Scott R. Jeeves, Brian L. Weakland and Gary J. Takacs.

Haire was involved in unfair and deceptive sales practices and violations of Truth in Lending. He was front-loading his contracts with etch costs, gap insurance and extended warranties. The litigation, which began in earnest in 2002, overcame a number of hurdles before the class action was certified (14,000 class members). The plaintiffs were granted summary judgment on several counts and reached a settlement on the eve of going to trial. Unfortunately, the dealer filed bankruptcy before collection could take place.

Craig, who has considerable experience in bankruptcy cases, skillfully extracted funds from a number of insurance payments. Ultimately, the team settled for close to eight million dollars. Although more than half of the settlement went to the bankruptcy estate, the remainder came back to the class. After the class (70 percent of the class was located) and attorneys were paid, Rothburd and his team allocated \$100,000 to NCLC, for which we are very grateful.

We asked Craig how he came to the decision to give this cy pres to NCLC. Here's his response. *“Why give NCLC a cy pres, especially a large one? Large or small, it starts with my feeling about cy pres awards. They are to benefit members of the class you cannot reach. NCLC's reputation in protecting consumers speaks for itself. I attend the conferences, know and respect the attorneys, share common interests, know of all the seminars and publications which NCLC generates. The question is not, ‘Why give a cy pres to NCLC’ The question is: ‘Who would I give a cy pres rather than NCLC?’”*

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We appreciate those who support NCLC's work toward economic justice by directing cy pres to the Center.

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2011 Golden Phone Award: Community Leader

Olivia Wein, *Staff Attorney & Consumer Advocate, National Consumer Law Center*

Each year Community Voice Mail recognizes someone from outside the organization for their outstanding contributions to our mission of helping low-income and homeless people rebuild their lives by connecting them to jobs, housing, and hope. This year they recognized Olivia Wein.

This is what CVM said in announcing the award: “Olivia Wein is the consumer advocate you dream about. Tireless, intelligent, principled, and kind, Olivia embodies servant leadership. We—and our CVM clients—benefit greatly from her commitment.”

Community Voice Mail (CVM) helps people living in poverty, transition and homelessness rebuild their lives by connecting them to jobs, housing, information and hope.

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NCLC Releases New Revised Editions

From the Publications Department:

Consumer Arbitration Agreements (6th ed. Dec. 2011) (518 pp.). This critical volume, from the experts at Public Justice and other litigators experienced in challenging arbitration clauses, examines successful approaches to defeat arbitration requirements despite new Supreme Court decisions.

Automobile Fraud (4th ed. Dec. 2011) (702 pp.) thoroughly updates the leading treatise on odometer tampering, undisclosed sale of previously wrecked vehicles, lemon laundering, yo-yo sales and punitive damages recoveries.

Access to Utility Service (5th ed. Dec. 2011) (818 pp.) covers all the latest developments in regulation and delivery of electric, fuel and telecommunications service, including rights to prevent disconnection and restore service.

NCLC in December also released seven other new updates:

- *Consumer Bankruptcy Law and Practice 2011 Supplement*
- *Truth in Lending 2011 Supplement*
- *Unfair and Deceptive Acts and Practices 2011 Supplement*
- *Student Loan Law 2011 Supplement*
- *Fair Credit Reporting 2011 Supplement*
- *Consumer Law Pleadings 2011 Supplement*
- *Repossessions 2011 Supplement*

All titles include free updated companion websites to download, print and edit pleadings, agency interpretations, case summaries, and more. For more information or to order, call 617-542-9495 or visit www.nclc.org/shop.

CONFERENCES AND WEBINARS

The National Consumer Law Center has been busy providing training and technical assistance to attorneys and other advocates across the United States through a series of webinars, teleconferences and conferences. Donor funding makes these crucial activities possible by underwriting the costs of technology, research, writing and printing, among other training-related costs. To register for upcoming conferences or free webinars, please visit: <http://www.nclc.org/conferences-training/conferences.html>

CONFERENCES

FAIR DEBT CONFERENCE

Most notable this year was the successful NCLC Fair Debt Collection Practices conference held in New Orleans from February 23-24, and jointly-sponsored with the National Association of Consumer Advocates (NACA).

Rave Reviews. 99 percent of surveyed conference attendees rated the conference as Very Good or Excellent.

Impact is: Excellent Content and Helpful Information...That's What It's All About. Great reviews for this event were driven by the state-of-the-art content of our sessions. Some highlights:

★ *What are the Unfair—and Fair—Debt Collection Practices Affecting Consumers Now, Three Years into the Great Recession?* NCLC Deputy Director Bob Hobbs and Attorney Michelle Weinberg of the Legal Assistance Foundation of Metropolitan Chicago provided a warm welcome and overview of debt collection practices.

★ *Letter and Overcharge Cases; Developing a Private Fair Debt Practice; and Credit Reports.* These workshops were presented by NCLC Partners Council members Dave Philipps, Cary Flitter and Rand Bragg, respectively. Dave was joined by Mary Philipps; Cary by Mark Mailman; and Rand by Dick Rubin.

Upcoming Conferences

Mortgage Conference: July 17 - July 18 (Washington, D.C.)

Consumer Rights Litigation Conference: October 25 - 28 (Seattle, Washington). Registration opens soon!

WEBINARS

If your work involves representation of elder clients, please register for the following free NCLC-hosted webinars this spring:

May 22—Webinar for elder advocates: Providing Culturally Competent Services to Lesbian, Gay, Bisexual and Transgender Clients.

May 30—Webinar for elder advocates: Alternatives to Bankruptcy.

All webinars are held from 2-3:30 p.m. ET, unless otherwise noted.

NCLC's webinars are attended by thousands of advocates, social services providers and attorneys. Check out audio recordings and PowerPoint presentations from past webinars on a wide variety of consumer law topics at: <http://www.nclc.org/conferences-training/conferences.html>

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ADVOCATE SPOTLIGHT: Helping Low-Income Clients Navigate Bankruptcy

John Rao: NCLC Attorney, Outgoing Member of the Federal Judicial Conference Advisory Committee on Bankruptcy Rules

Just after U.S. Supreme Court Chief Justice Roberts appointed our own John Rao to serve on the Judicial Conference Advisory Committee on Bankruptcy Rules in 2006, Rao was described as “a national resource for attorneys struggling to help their clients.”

John is still a national resource for helping low-income clients achieve justice during bankruptcy proceedings. Here he reflects on his six years serving on the Advisory Committee, as his second three-year term concludes this year.

The Judicial Conference is the principal policy-making body concerned with the administration of the United States courts, and with establishing the rules of practice that are used in all federal courts.

Q: What have been your most important contributions while serving on the Advisory Committee?

A: Many homeowners file Chapter 13 bankruptcy to save their homes from foreclosure, by entering into a plan to get current on their mortgage. A serious problem in these cases, even before the current foreclosure crisis, is that mortgage servicers fail to provide consumers with critical information they need about their accounts to stay current.

Some consumers would make all the payments required by their plans for 3 to 5 years, but emerge from bankruptcy in default again because the servicer failed to notify them about escrow account or adjustable rate mortgage payment changes, or that fees had been charged to the account. Individual bankruptcy courts also struggled with procedural methods to resolve payment application disputes and to make determinations at the end of the case about whether the consumer had cured the default and should exit the case fully current.

I chaired a working group of the Advisory Committee that developed

new rules and official forms to address these problems. The new rules and forms were approved by the U.S. Supreme Court and went into effect on Dec. 1, 2011. I am hopeful that these rules will improve the bankruptcy system and make Chapter 13 a more effective tool for consumers to avoid foreclosure.

Q: As your second term concludes, what do you feel is left undone?

A: We have begun work on a number of proposed rule changes directed at other long standing areas of concern in Chapter 13 practice. Courts and litigants have adopted different approaches on a variety of issues, such as the matters that can be resolved as part of the plan confirmation process, the timing of plan confirmation as it relates to the filing of creditor claims, and the use of model Chapter 13 plans.

The proposed changes being developed should improve efficiencies for all parties in Chapter 13 cases and avoid unnecessary litigation. Although the proposals will not be completed before my term ends, I am hopeful that they will be ready for publication for public comment sometime next year.

Q: How will you participate in the rule-making process going forward?

A: My participation on the Advisory Committee has helped me to appreciate the extraordinary effort of Committee members to solicit and consider public comment. All public comments, whether as new suggestions or in response to requests for comment on proposed rules, are given serious consideration by the Committee. It is also critical that the Committee receive input from the consumer debtor and practitioner perspective. Through my work at the Center and as vice-president of the National Association of Consumer Bankruptcy Attorneys, I hope to provide that input in the



*John Rao,
Staff Attorney*

future as a member of the public rather than as a Committee member, and to encourage other consumer attorneys to do the same.

Q: At this time, what is most hopeful for consumer bankruptcy law—and what is most sobering?

A: The bankruptcy system provides a unique perspective on broader economic problems and often is the first place that abusive and unfair consumer products and practices are uncovered. This was certainly true with the foreclosure crisis, as it was the detailed fact finding and analysis by bankruptcy attorneys and bankruptcy courts that exposed many of the most egregious mortgage origination and servicing practices. I believe the bankruptcy system will continue to serve this important function and help inform policy-makers about which solutions are or are not working.

This leads to what is the most sobering part of bankruptcy law, or what I believe was the greatest missed opportunity for this nation in dealing with the foreclosure crisis. Congress considered but failed in 2008 to enact legislation that would have permitted home mortgages to be modified in Chapter 13 bankruptcy cases. This drastically needed change could have made a significant difference by helping many homeowners avoid foreclosure, encouraging voluntary loan modifications, and stabilizing the broader economy.

Payday is not just a candy bar....

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managing attorney of NCLC's Washington, D.C. office. "Whether offered through traditional checking accounts or on a prepaid card, bank payday loans lead to the same cycle of debt as traditional payday loans," she said. "Permitting the bank to take first cut at the wage or benefit check when it is deposited jeopardizes income needed for food, rent and other necessities."

NCLC recently successfully led a coalition of consumer groups in urging the OCC to stop Urban Trust Bank from helping the payday lender CheckSmart avoid Arizona and Ohio payday laws. Helping a payday lender evade state laws "is an abuse of the national bank charter," said Saunders. Last year, NCLC also criticized the OCC's proposed guidance on payday loans that banks make directly. "Offering 'guidance' on how to offer an inherently dangerous product will only legitimize bank payday loans and encourage even more banks to offer triple-digit balloon-payment loans that exploit families living paycheck to paycheck," Saunders said. The OCC has not finalized the guidance.

The CFPB is also looking at bank payday loans. Director Rich Cordray noted in a recent speech that the agency is scrutinizing payday loans no matter who offers them. NCLC filed comments urging the CFPB to stop both banks and storefront lenders from making loans that consumers cannot repay without repeat usage, and to encourage only affordable loans.

Banks may claim that their "deposit advances" are alternatives to payday loans. But in a 2010 report, *Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't*, NCLC debunked several myths about payday alternatives. Additionally, NCLC urges consumers to seek different solutions altogether. In many cases, saving, budgeting, doing

without or borrowing from friends and family are safer choices. When credit cannot be avoided, NCLC advocates that, to avoid the pitfalls of payday loans, an alternative product must:

- Have an annual percentage rate (APR), including fees, of 36% or less;
- Have a term of at least 90 days, or at least one month per \$100 borrowed;
- Require multiple installment payments rather than a single balloon payment;
- Not require that the borrower turn over a post-dated check or electronic access to a bank account;
- Be extended only to consumers who have the ability to repay the loan without rolling it over.

Do you have information about a consumer who has been harmed by a bank payday loan? If you do, please contact Lauren Saunders, 202-452-6252, ext. 105, or e-mail at lsaunders@nclc.org.

We do not often share personal notes. But when Lauren Saunders received this hand-written note from Senator Sherrod Brown of Ohio, we thought NCLC supporters would want a brief glimpse into the kind of response we get to our work.

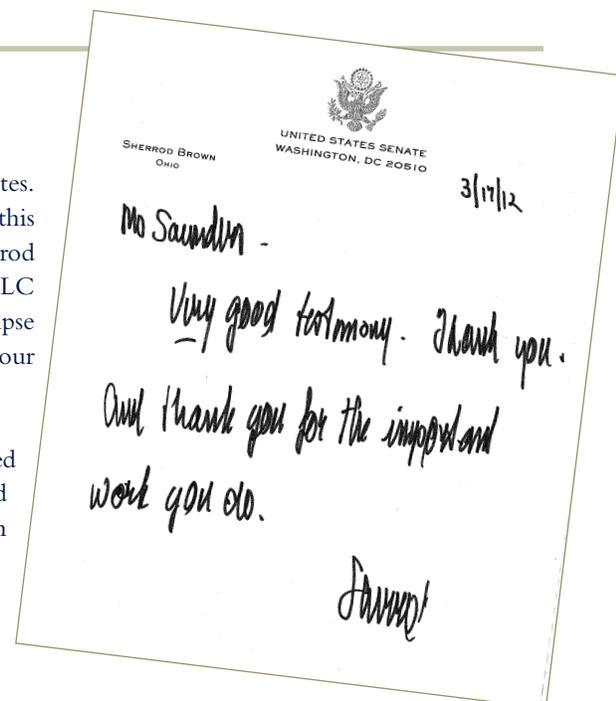
In this instance, Senator Brown thanked Saunders for her recent prepaid card testimony before the U.S. Senate, which was the lead article in the Fall/Winter 2011 edition of NCLC's newsletter.

Banks simply should not be in the payday loan business.

Permitting the bank to take first cut at the wage or benefit check when it is deposited jeopardizes income needed for food, rent and other necessities.

LAUREN SAUNDERS
Managing Attorney,
NCLC's Washington Office

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Federal regulators take steps...

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the foreclosure crisis,” said Diane Thompson, Of Counsel to NCLC, in a statement. “It raises the bar for future efforts to address the foreclosure crisis. However, much work remains to be done.”

In another recent development, the Consumer Financial Protection Bureau announced in April 2012 that it is considering several new rules aimed at increasing transparency and accountability in the mortgage-servicing industry. The agency is seeking public comment before formally proposing the rules, which are expected to be finalized by next year.

According to NCLC Attorney Alys Cohen, the proposals are another positive step forward, but once again, they do not go far enough in providing real relief for homeowners. “It is inexplicable that federal regulators continue to give servicers nearly unlimited discretion to foreclose instead of modifying, even when both the homeowner and the investor would benefit,” said Cohen. “Given the disgraceful track record of servicer behavior, the Consumer Financial Protection Bureau should adopt strong, enforceable national standards for servicer conduct that can save homes and stabilize the housing market.”

New Housing Reports & Articles from NCLC Experts!

Download them online at: www.nclc.org/issues/foreclosures-and-mortgages.html

Rebuilding America: How States Can Save Millions of Homes Through Foreclosure Mediation (February 2012) by Geoff Walsh. Foreclosure mediation programs are a proven, inexpensive tool to keep paying borrowers in their homes while saving communities and investors billions of dollars. All states should adopt effective foreclosure mediation programs with enforceable standards and robust outreach as permanent features of state foreclosure laws.

Foreclosing Modifications: How Servicer Incentives Discourage Loan Modifications. *86 Washington Law Review 755* (2011), by Diane Thompson. The financial compensation and constraints imposed on and chosen by mortgage servicers lead servicers to prefer refinancing, foreclosures, and short-term repayment plans to modifications. ***Mortgage Servicing. 28.1 Yale Journal on Regulation*** (2011). Tara Twomey and

Georgetown University law professor Adam Levitin examine the business model and economics of mortgage servicing and explain how incentives impede loan modifications that could prevent foreclosures.

Why Responsible Mortgage Lending is a Fair Housing Issue (NCLC Issue Brief—February 2012). NCLC attorneys Odette Williamson, Alys Cohen, Diane Thompson and Dan Lindsey (of the Legal Assistance Foundation of Metropolitan Chicago) connect dots that few others have: that the 21st century’s subprime lending crisis—and its detrimental aftershocks of foreclosures—was also a fair housing crisis. This publication explains “how the historic legacy of redlining contributed materially to the subprime boom and bust, as subprime lenders and brokers flooded African-American and Latino communities where credit was scarce.”

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Feedback from attendees at NCLC’s 2011 Mortgage Conference:

- “This program had an immediate impact on my practice in regard to TILA issues and raising affirmative defenses and counterclaims in mortgage defense cases.”
- “Great experience for a newish attorney!”
- “Very well-run and organized and chock full of great information.”

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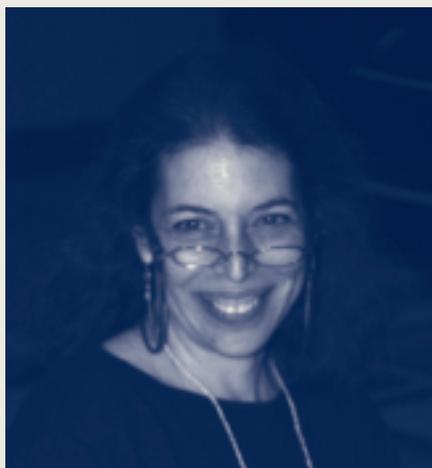
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Margot Saunders, Of Counsel

*Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.*

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Hold the Garnish—Protecting Destitute Debtors' Social Security Income

NCLC Attorney Spearheads Coalition and Advocates for Treasury Rule Amendment

When a bank applies an attachment or garnishment order to the exempt funds in a low income recipient's bank account, the consequences are generally devastating.

Margot Saunders

Everyone reading *Consumer Impact*, everyone who donates to NCLC to promote our mission, everyone who stands up for fairness—even in complicated situations where black and white fade into shades of grey—will appreciate what NCLC attorney Margot Saunders has focused on: the principle that Social Security, SSI and Veterans Benefits deposited into bank accounts should be protected from total garnishment orders.

Last year brought a victory for recipients of federal benefits that NCLC helped secure when the Treasury Department issued a rule mandating banks to protect two months of electronically deposited government benefits from garnishment. Despite NCLC's work, Treasury's rule permitted past due child support orders to empty out the bank accounts—leaving elderly or disabled beneficiaries penniless for months on end. As a result, in the past few months NCLC has led a coalition to push protections for all recipients, even from garnishment for past due child support. To promote that position, Saunders wrote a letter to the Social Security Commissioner and gathered signatures from more than 70 groups nationwide, requesting that the Commissioner reject a proposed Treasury

Rule since it did not protect two months of benefits for past due child support.

The initial battle was to convince the Office of Management and Budget (OMB) to postpone final issuance of the Treasury Rule, to permit the possibility that it could still be corrected to protect beneficiaries from seizure of 100% of their benefits. With encouragement from members of Congress, OMB did postpone issuance of the final rule.

This advocacy effort was affirmed by a *New York Times* editorial that praised NCLC's advocacy. "In a letter to the commissioner of Social Security, the National Consumer Law Center and 72 other advocacy groups pointed out that 70 percent of uncollected child support is owed by people who live below the poverty line and much of the debt arose because support obligations were not revised when the debtor become disabled, unemployed or incarcerated. Since the debts are often old, the amounts have been inflated by interest and penalties," states the February 23, 2012 editorial.

Saunders and NCLC remain actively engaged in the larger issue of electronic payment of federal benefits, which is now mandated by the U.S. Treasury. Because electronic payments can be depleted by garnishment, overdraft loans and payday loans, NCLC is pushing for adequate protections. *Thank you for the support you provide to NCLC, whether in cy pres awards, individual gifts or partnering with us in other ways. It enables us to do this important work.*