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News from

## Mobilization for Justice

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## Older Adults Hit Hardest by Student Loan Debt

Student loans make up the nation's second largest consumer debt market after mortgages. Even worse, adults over age 60 are the fastest growing segment of student loan holders. In New York State, outstanding student debt more than doubled over the last decade, rising to \$82 billion, according to a report from the state's comptroller. According to the federal Consumer Financial Protection Bureau (CFPB), over the past decade the number of older student loan borrowers has quadrupled and the amount of debt per older borrower has roughly doubled, as many have taken out or co-signed loans for children or grandchildren, or are still paying off their own loans.

### Servicers Misrepresent Options

John, age 77, is one of scores of older clients who came to Mobilization for Justice for help

after he discovered that the government was garnishing \$140 of his \$997 monthly Social Security retirement benefits to pay his 35-year-old student loans, which were in default. Although he had attended a paralegal studies program in 1982 for only a short time, the balance on his loans was over \$15,000.

"John had options to stop garnishment of his benefits," said MFJ Senior Staff Attorney Evan Denerstein, who specializes in student debt issues. "But his loan servicer



never informed him that he could consolidate his loans and immediately get out of default.

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## African-American Woman Wins Housing Case Settlement on Race and Source of Income Discrimination

When Sandra, who was living in a shelter, received a voucher from New York City's Living in Communities (LINC) rental assistance program, she looked forward to having a real home again. But like many other homeless families, she found landlords were not willing to accept her LINC voucher. The Fair Housing Justice Center (FHJC) conducted testing and found that Kosova Properties, which manages 19 buildings with more than 350 units in the Bronx and Manhattan, was discriminating against potential tenants based on race and source of income.

Sandra, represented by Mobilization for Jus-

tice (MFJ), and three African-American testers and the FHJC, represented by Emery Celli Brinckerhoff & Abady LLP, filed suit in federal court, alleging race and source of income discrimination, including that the landlord's refusal to accept LINC vouchers has a disparate impact based on race. The case, filed in May 2016, settled on the eve of trial. Under the four-year settlement agreement, the landlord agrees not to discriminate; to adopt a fair housing policy; undergo fair housing training; allow tenants who live in the one building where the defendants allegedly steered African-American tenants to transfer to

available units in other buildings the defendants own; and hire a third-party employee who will handle rental inquiries at all of the larger rental buildings operated by the defendants. The settlement includes a \$620,000 monetary recovery.

MFJ Staff Attorney Shanila Ali, who handled the case, said: "No family should have to languish in the shelter system because of discrimination based on race or source of income. This settlement will send a strong message to landlords that fair housing is not a choice, it's the law."

# Student Loan Debt

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There are programs to help low-income borrowers and seniors on fixed incomes like John, but the loan servicers have no incentive to inform people of these options."

With Denerstein's help, John consolidated his loans, which stopped the garnishment, and entered an income-driven repayment plan. Because of his low fixed income, his monthly payment was reduced to zero. He checks in with Denerstein each year for help recertifying his income to stay in the repayment plan because he finds the "guidance" from the servicer to be confusing.

## Servicers Often Encourage More Costly Options

"Student loan servicers push borrowers into 'rehabilitation' because they are better compensated for rehabilitation under their contracts with the U.S. Department of Education," said Denerstein. "But most borrowers would benefit more from consolidation because the complicated process of rehabilitation leads to a higher percentage of borrowers defaulting a second time and fewer entering into an income-driven repayment plan after their second default."

Claudia is a case in point. She reached out to MFJ when she received calls from her student loan servicer threatening to garnish her income. Her student loans had fallen into default because, with an income of \$1,000 per month, she could not afford the \$225 monthly payment. When she contacted her servicer, she was given one option, rehabilitation, which would mean negotiating separate agreements for each of her loans and risking future default. With MFJ's help she consolidated her loans and entered an income-driven repayment plan that, like John, lowered her payment to zero per month while her income remains so low.

## People with Disabilities Not Told about Potential Relief

Even more egregious are servicers who fail to inform borrowers who have become disabled that they may qualify for relief through a Temporary or Permanent Disability discharge. Berenice attended a nine-month long fashion design program in 1989, and later learned that the school had closed due to fraudulent activities. She had borrowed \$6,225 in student loans, and made payments for about a year until she was



diagnosed with cancer, which rendered her disabled and unable to work for some period of time. She received a letter stating her payments would be \$245 per month, and she now believes she owes \$32,000. She was never told about a disability discharge, school-related discharges, or income-driven repayment plans. MFJ was able to get a total and permanent loan discharge for Berenice.

Angel, who can no longer work because of disability, took out \$6,000 in loans to attend an auto trade school in 1987. The school closed before it could keep its promise of getting him a job. His loan balance was \$20,000 when he contacted MFJ and the IRS had taken \$4,990 from his wife's tax return because of Angel's student debt. MFJ guided Angel's wife through the process of documenting that her name was not on the loan, which restored her tax refund, and secured a total and permanent loan discharge for Angel, an option his servicer had failed to mention.

## CFPB Issues Report on Loan Servicers' Failings

In January 2017, the Consumer Financial Protection Bureau issued a report detailing complaints from older student loan borrowers about problems with servicers. The report confirms what MFJ had been seeing for years: servicers fail to inform borrowers about income-driven repayment options and steer them to plans that suspend repayment and cause the interest on loans to pile up; co-signers found that their payments were spread across all serviced private student loans owned by the primary borrower, causing late fees and interest charges to accu-

mulate; servicers threatened borrowers' federally protected benefits; and servicers failed to place eligible borrowers in Public Service Loan Forgiveness programs, among other problems.

## Education Department Takes Lax Approach on Protecting Borrowers

In April 2017, the U.S. Education Department rescinded a series of policy memos issued to strengthen consumer protections for student loan borrowers. The Government Accountability Office had found that 70% of people in default actually qualified for a lower monthly payment through income-driven plans but that servicers had failed to provide sufficient information to borrowers.

The earlier memos ordered the Education Department to hold servicers accountable for borrowers receiving accurate, consistent and timely information about their debt, and to create financial incentives for targeted outreach to people at great risk of defaulting on their loans.

"The new policy will result in even more borrowers needing legal help to manage their loans and secure better repayment options," said Denerstein.

In another blow to borrowers, the Education Department decided to stop sharing critical information on \$1.3 trillion in federal student loans with the CFPB, ending a partnership that had enabled the Bureau to sue loan companies and compel servicers to change their practices.

## States Stepping Up Efforts to Regulate Student Loan Servicers

Attorneys general from 20 states, including New York, expressed profound concern about

# in brief

## MFJ Helps Bronx Family of Six Save Their Apartment

A Bronx family of six, whose yearly income was \$32,000, was about to be evicted after owing almost half of their yearly income in back rent due to a series of unforeseen setbacks. If they lost their home, finding another affordable apartment would be next to impossible and their lives would be upended if they were forced to move to a city shelter. The family did not qualify for various city programs that pay rent arrears so MFJ Staff Attorney Andrew Stafitti negotiated agreements to postpone the eviction while he worked the phones, eventually convincing six different charities to provide the needed funds. With the arrears guaranteed, Staff Attorney Tangier Harper handled the final stipulation that discontinued the case.

## Judge: Immigrant Can Keep NYCHA Apartment



When the New York City Housing Authority (NYCHA) decided to increase Ms. T's rent based on her immigration status, she came to MFJ for help. Although disputes with NYCHA are generally handled in administrative proceedings, MFJ Staff Attorney Natalie Webb took the case to Housing Court, arguing that Ms. T's C-10 immigration status did not mean she was an "ineligible alien" as NYCHA claimed.

The Judge agreed and stated in his decision that the Court had jurisdiction to decide the issue even though Ms. T was pursuing an administrative grievance about her rent. That decision is an important victory for public housing tenants because NYCHA routinely argues that tenants cannot challenge the validity of their rent in Housing Court.

## Medicaid and Food Stamps Restored for Senior

When Ms. L began receiving her husband's Holocaust reparations from Germany after he passed away, her Medicaid and Food Stamp benefits were reduced since the government counted these monies as income. MFJ Paralegal Germán Castañeda contacted the German government agency involved to get proof that the funds were reparations, not income. The City's Human Resources Administration restored the Food Stamp benefits based on the translated documents, and Mr. Castañeda represented Ms. L at a Fair Hearing to get her Medicaid benefits restored.

## MFJ Staff Receive Awards for Outstanding Work

Congratulations to several MFJ staff who have been honored this year for outstanding work and contributions to public interest law. **Orier Okumakpeyi**, a Senior Staff Attorney specializing in Medicaid, Medicare and other government benefits, received the Legal Services Award from the New York City Bar Association. **Elise Brown**, MFJ's Deputy Director for Legal Practice and Director of Litigation for Housing, was honored with the 2017 Award for Public Service from the New York County Lawyers' Association. **Kevin Cremin**, MFJ's Director of Litigation for Disability and Aging Rights, was the recipient of the Acting for Justice Award from the Fair Housing Justice Center.

## pro bono news

### Volunteer Attorney Helps Clients Resolve Consumer Problems



Sydney Smith advising consumer clients at MFJ.

After a 13-year career handling commercial litigation matters at two law firms, Sydney Smith wanted a change and looked for volunteer opportunities. She found Mobilization for Justice in 2010 (then called MFY Legal Services) and has become a valued member of the Consumer Rights Project.

"I wanted a volunteer opportunity that allowed me to be involved with people so the fact that MFJ had an active hotline really attracted me," she said.

Sydney has been answering calls to the hotline since 2012. "People call with all sorts of problems," she said. "Credit card debt affects a huge number of people, but many people are duped into signing loans and are never told what the real payments will be."

Over the years, Sydney has provided critical advice to hundreds of callers and has also written demand letters and advocated for clients who because of age or disability were unlikely to be able to advocate for themselves.

"An elderly woman called one day who was involved in a payment dispute with a storage company. The company was threatening to sell off all of her belongings and she was in a panic because she knew she had made the monthly payment in person. My intervention was simple — a letter and a phone call resolved the issue. It's nice to do something that has an immediate impact on people. That's what makes this work so rewarding."

## Imprisoned in Their Homes

# MFJ White Paper Exposes Improper Nursing Home Policies

A new report by Mobilization for Justice (MFJ) details the barriers that nursing home residents face when they attempt to leave their home to visit family or friends, attend religious services, shop, or simply sit outside in the fresh air. The report recommends that the New York State Department of Health (DOH) follow successful policies used in other states to protect the independence of nursing home residents, while ensuring their safety, and promote community inclusion.

"Most nursing homes require residents to request a day pass each time they want to leave the nursing home — whether it's for a short excursion to have lunch with a family member or an overnight stay," said Samantha Rauer, a Staff Attorney at Mobilization for Justice and author of the report. "Detaining residents in this way violates the Americans with Disabilities Act (ADA) and state and federal regulations."

MFJ's investigation found that there is no guarantee that residents who request a day pass will get one. Overly restrictive day pass policies include requiring residents to request a pass days in advance,

offering no opportunity to appeal if the request is denied, limiting passes to certain hours or requiring that residents plan out their exact whereabouts and time schedule in advance. Some require that residents have an escort at all times or require a physician consultation and medical order stating that the resident is "mentally cleared and medically stable."

Michelle Bagley, a former resident of a Bronx nursing home, was initially prevented from leaving the home to attend religious services at a mosque where she had worshipped for many years. "Everyone has the right to worship in your own way. Without a day pass in the nursing home, you can't get out. There are so many different religions and ways to worship but they don't offer half of that. You can't tell me how to worship



my God," she said. With MFJ's intervention, Ms. Bagley secured a standing pass for religious services.

"Given that these are homes, and not prisons, residents' right to leave should be limited only when there is an individualized, documented medical reason to limit that right," said Kevin M. Cremin, MFJ's Director of Litigation for Disability and Aging Rights. "The DOH should develop a model policy for day pass access, issue clear guidance on residents' rights to day passes, and track complaints about restrictive day pass access."

## Student Loan Debt

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the Education Department's decision to rescind earlier guidance on reforming the servicer contracting process. Some states have already moved to better protect student loan borrowers. In 2015, Connecticut became the first state to license its student loan servicers. Several others have followed suit, but enforcement remains a challenge. In large part due to advocacy by MFJ and other consumer advocates, a bill was introduced in the New York State Assembly in April 2017 to regulate student loan servicers and was later included in the governor's proposed budget. It was removed from the final budget after Republicans objected. The Assembly passed it again, but the companion bill is stalled in the Senate. MFJ is currently working to get it

included in next year's budget.

The bill includes provisions to license and regulate student loan servicers who handle the loans of New York residents; prohibits servicers from common unfair, deceptive, and misleading tactics; creates strong standards for the retention of records and continuing borrower benefits in the event of sale, assignment, or other transfers; and subjects student loan servicers to examination by the Superintendent of the state's Department of Financial Services.



**MFJ Attorney Evan Denerstein counsels a client.**

"New York has always been a leader when it comes to consumer protection and this is really a chance for the state to step forward and take the lead on this issue," said Denerstein.