

# Congress of the United States

Washington, DC 20515

March 19, 2024

The Honorable Martin J. O'Malley  
Commissioner  
Social Security Administration  
6401 Security Blvd  
Baltimore, MD 21235

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Commissioner O'Malley, Secretary Yellen, and Secretary Cardona:

We write to request that the Social Security Administration (SSA), the U.S. Department of the Treasury (Treasury), and the U.S. Department of Education (ED) consider seeking an end to the practice of offsetting Social Security benefits to pay off defaulted student loans, a particularly devastating practice for seniors and people with disabilities who rely on Social Security as their sole source of income. We applaud the Biden Administration's ongoing efforts to address student debt by providing relief to nearly four million Americans,<sup>1</sup> including automatic cancellation for half a million people with total and permanent disabilities,<sup>2</sup> and urge you to build on this success by protecting Social Security benefits from being offset to pay down student loan debt.

The Treasury Offset Program (TOP), established under the *Debt Collection Improvement Act of 1996*, authorizes the collection of defaulted federal student loans and other federal nontax debt by the Treasury Department.<sup>3</sup> As a growing number of older Americans have federal student loan debt when they near or enter retirement age, we are concerned that these older borrowers are disproportionately subject to TOP collection.<sup>4</sup> In these cases, the Department of Education and

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<sup>1</sup> The White House, "FACT SHEET: President Biden Cancels Student Debt for more than 150,000 Student Loan Borrowers Ahead of Schedule," press release, February 21, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/21/fact-sheet-president-biden-cancels-student-debt-for-more-than-150000-student-loan-borrowers-ahead-of-schedule/>.

<sup>2</sup> U.S. Department of Education, "Biden-Harris Administration Announces an Additional \$9 Billion in Student Debt Relief," press release, October 4, 2023, <https://www.ed.gov/news/press-releases/biden-harris-administration-announces-additional-9-billion-student-debt-relief>; U.S. Department of Education, "Over 323,000 Federal Student Loan Borrowers to Receive \$5.8 Billion in Automatic Total and Permanent Disability Discharges," August 19, 2021, <https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges>.

<sup>3</sup> The Debt Collection Improvement Act of 1996, Public Law 104-134.

<sup>4</sup> U.S. Government Accountability Office, "SOCIAL SECURITY OFFSETS: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief," report, December 19, 2016, <https://www.gao.gov/assets/gao-17-45.pdf>.

Treasury coordinate to withhold a portion of Social Security or disability benefits to recoup funds for defaulted loans, in a process known as “administrative offset.”

The number of older Americans with student loan debt has been rising steadily. In 2023, over 3.5 million Americans aged 60 and older had outstanding student loan debt, worth a total of over \$125 billion.<sup>5</sup> This represents a six-fold increase in the number of older borrowers and a nineteen-fold increase in the amount owed by older Americans compared to 2004.<sup>6</sup>

Unfortunately, older borrowers often face the greatest repayment struggles, with nearly 40 percent of federal borrowers over the age of 65 in default on their student loans.<sup>7</sup> These borrowers who have struggled with their student loan repayment progress could see their wages, tax refunds, and Social Security checks garnished or offset. Under TOP, the federal government can withhold up to 15 percent of monthly Social Security or disability benefits for defaulted student loans.<sup>8</sup> Roughly 44 percent of borrowers who were 50 years and older at the time of their initial offset were subject to this maximum Social Security benefit withholding.<sup>9</sup> When borrowers are in collections, on average their Social Security benefits are estimated to be reduced by \$2,500 annually.<sup>10</sup> This can be a devastating blow to those who rely on Social Security as their primary source of income. According to SSA, Social Security benefits represented 90 percent or more of total income for about one-third of beneficiaries aged 65 and older in 2014, the last year of available data.<sup>11</sup>

There is little evidence that these offsets are a meaningful solution to collecting outstanding debt. Almost a third of borrowers 50 and older who had offsets lasting five years or longer had their loan balances *increase* during this time period.<sup>12</sup> And more than 70 percent of the loan repayments collected through Social Security offsets were applied to fees and interest.<sup>13</sup>

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<sup>5</sup> New America, “Why Do So Many Older Americans Owe Student Loans?,” Tia Caldwell and Sarah Sattelmeyer, May 31, 2023, <https://www.newamerica.org/education-policy/edcentral/why-do-so-many-older-americans-owe-student-loans/>.

<sup>6</sup> *Id.*

<sup>7</sup> Consumer Reports, “Student Loan Servicing Issues Contribute to Older Borrowers’ Default,” January 5, 2017, <https://www.consumerreports.org/consumerist/student-loan-servicing-issues-contribute-to-older-borrowers-defaults/>.

<sup>8</sup> U.S. Department of the Treasury, Bureau of the Fiscal Service, “Fact Sheet: Treasury Offset Program Summary of Program Rules and Requirements,” <https://www.fiscal.treasury.gov/files/top/TOP-rules-reqs-fact-sheet.pdf>.

<sup>9</sup> U.S. Government Accountability Office, “SOCIAL SECURITY OFFSETS: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief,” report, December 2016, <https://www.gao.gov/assets/gao-17-45.pdf>.

<sup>10</sup> CNBC, “Falling behind on student loans can reduce Social Security benefits by \$2,500 a year,” Lorie Konish, January 5, 2023, <https://www.cnbc.com/2023/01/05/delinquent-student-loans-can-reduce-social-security-by-2500-a-year.html>.

<sup>11</sup> Social Security Administration, Office of Retirement and Disability Policy, “Fast Facts & Figures About Social Security, 2016,” Income of the Aged Population – Relative Importance of Social Security, 2014, [https://www.ssa.gov/policy/docs/chartbooks/fast\\_facts/2016/fast\\_facts16.html](https://www.ssa.gov/policy/docs/chartbooks/fast_facts/2016/fast_facts16.html).

<sup>12</sup> U.S. Government Accountability Office, “SOCIAL SECURITY OFFSETS: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief,” report, p. 25, December 2016, <https://www.gao.gov/assets/gao-17-45.pdf>.

<sup>13</sup> Postsecondary National Policy Institute, “Older Student Loan Borrowers Who Default May Face Reduction in Social Security Benefits,” Rachel Fenton, January 5, 2017, <https://pnpi.org/older-student-loan-borrowers-who-default-may-face-reduction-in-social-security-benefits/>.

Nonetheless, in the years prior to the March 2020 COVID-19 student loan payment pause, the number of Social Security beneficiaries subjected to offsets due to defaults surged dramatically. From fiscal years 2002 to 2015, the number of defaulted federal student loan borrowers of any age with Social Security offsets more than quadrupled, jumping from around 36,000 to 173,000 borrowers.<sup>14</sup> This trend was particularly pronounced for borrowers aged 65 and older: the number of borrowers in that age range with offsets increased by a staggering 540 percent.<sup>15</sup> By fiscal year 2015, Social Security checks of approximately 114,000 borrowers aged 50 and older were being offset to repay defaulted federal student loans.<sup>16</sup>

The payment pause offered temporary relief for Americans struggling with student debt and allowed for older Americans to retain their full Social Security checks. However, on October 1, 2023, ED lifted the suspension of loan payments, and student loan repayments resumed.<sup>17</sup> This unprecedented restart of payments for tens of millions of borrowers raises serious concerns about their financial well-being. While we commend the Biden Administration’s 12-month on-ramp to repayment, which offers temporary protection from delinquency, reporting, and debt collection, we are concerned that borrowers will face the extreme consequences associated with missed payments when protections expire in late 2024.<sup>18</sup> At this point, many borrowers could once again face Social Security offsets due to defaulted student loans.

Given alarming reports exposing the crushing impact of offsets on older Americans dependent on Social Security,<sup>19</sup> we urge you to consider seeking an end to administrative offset of student loan debts for all Social Security benefits. Under the *Debt Collection Improvement Act*, the head of a benefit-paying agency may request the Treasury Secretary exempt certain federal payments from administrative offset when such offset would “tend to interfere substantially with or defeat the purposes of the payment certifying agency’s program.”<sup>20</sup> Offsetting Social Security benefits

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<sup>14</sup> U.S. Government Accountability Office, “SOCIAL SECURITY OFFSETS: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief,” report, December 2016, p. 11, <https://www.gao.gov/assets/gao-17-45.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> POLITICO, “Biden admin will resume interest on federal student loans Sept. 1; monthly payments due in October,” Michael Stratford, June 12, 2023, <https://www.politico.com/newsletters/weekly-education/2023/06/12/biden-admin-will-resume-interest-on-federal-student-loans-sept-1-monthly-payments-due-in-october-00101431>; Fiscal Responsibility Act of 2023, Public Law 118-5, Title IV, Sec. 271.

<sup>18</sup> U.S. Department of Education, “Secretary Cardona Statement on Supreme Court Ruling on Biden Administration’s One Time Student Debt Relief Plan,” press release, June 30, 2023, <https://www.ed.gov/news/press-releases/secretary-cardona-statement-supreme-court-ruling-biden-administrations-one-time-student-debt-relief-plan>.

<sup>19</sup> U.S. Government Accountability Office, “SOCIAL SECURITY OFFSETS: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief,” report, December 2016, <https://www.gao.gov/assets/gao-17-45.pdf>; Student Borrower Protection Center, “BEYOND FRESH START, Addressing the Flaws of the Current Student Loan Collection System,” August 2022, pp. 57-63, <https://protectborrowers.org/wp-content/uploads/2022/08/Beyond-Fresh-Start.pdf>.

<sup>20</sup> The Secretary’s exemption authority appears at 31 U.S.C. § 3716(c)(3)(B), which reads: “The Secretary of the Treasury shall exempt from administrative offset under this subsection payments under means-tested programs when requested by the head of the respective agency. The Secretary may exempt other payments from administrative offset under this subsection upon the written request of the head of a payment certifying agency. A written request for exemption of other payments must provide justification for the exemption under standards prescribed by the Secretary. Such standards shall give due consideration to whether administrative offset would tend to interfere

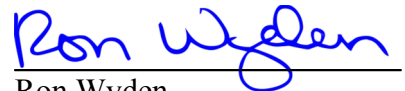
can push beneficiaries closer to—or even into—poverty, undermining the *Social Security Act*'s mission of providing for “the general welfare,” basic economic security, and the well-being of vulnerable Americans.<sup>21</sup> Accordingly, we urge you to explore exempting Social Security retirement, survivor, and disability benefits from administrative offset due to student loan debt.

We ask that you provide a briefing on your efforts no later than April 3, 2024. Thank you for your attention to this important matter.

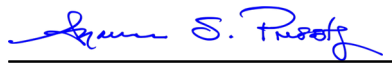
Sincerely,



Elizabeth Warren  
United States Senator



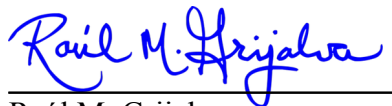
Ron Wyden  
United States Senator



Ayanna Pressley  
Member of Congress



Pramila Jayapal  
Member of Congress



Raúl M. Grijalva  
Member of Congress




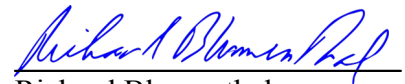
John B. Larson  
Member of Congress


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substantially with or defeat the purposes of the payment certifying agency's program. The Secretary shall report to the Congress annually on exemptions granted under this section.”

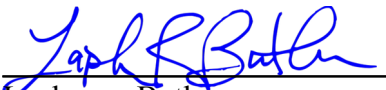
<sup>21</sup> The Social Security Act, Public Law 74-271.

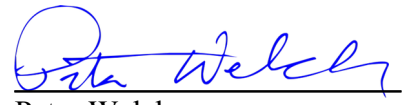
  
Jeffrey A. Merkley  
United States Senator

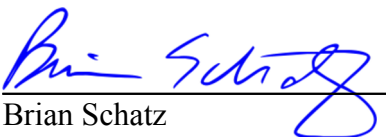
  
Richard Blumenthal  
United States Senator


  
Sheldon Whitehouse  
United States Senator


  
Alex Padilla  
United States Senator

  
Raphael Warnock  
United States Senator

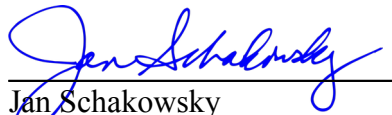
  
Peter Welch  
United States Senator

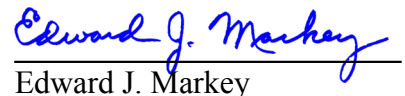
  
Brian Schatz  
United States Senator


  
Tina Smith  
United States Senator


  
Bill Pascrell, Jr.  
Member of Congress

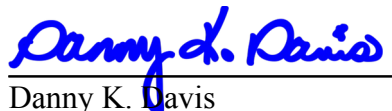
  
Doris Matsui  
Member of Congress


  
Jan Schakowsky  
Member of Congress


  
Edward J. Markey  
United States Senator


  
Chris Van Hollen  
United States Senator


  
Bernard Sanders  
United States Senator


  
Danny K. Davis  
Member of Congress

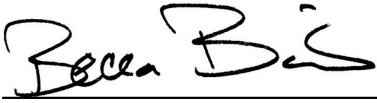
  
James P. McGovern  
Member of Congress

  
Frederica S. Wilson  
Member of Congress  
Ranking Member,  
Subcommittee on Higher  
Education and Workforce  
Development

  
Robert Garcia  
Member of Congress

  
Jamaal Bowman, Ed.D.  
Member of Congress

  
Alexandria Ocasio-Cortez  
Member of Congress



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Becca Balint  
Member of Congress



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Cori Bush  
Member of Congress



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Alma S. Adams, Ph.D.  
Member of Congress



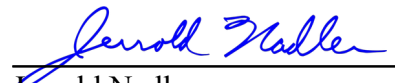
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Mazie K. Hirono  
United States Senator



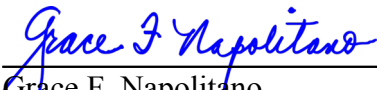
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Sheila Jackson Lee  
Member of Congress



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Jerrold Nadler  
Member of Congress



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Grace F. Napolitano  
Member of Congress