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PUSHED INTO POVERTY

How Student Loan Collections Threaten the Financial Security of Older Americans

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By

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ABOUT THE AUTHOR

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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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The Social Security program…represents our commitment as a society to the belief that workers should not live in dread that a disability, death, or old age could leave them or their families destitute.

— President Jimmy Carter, December 20, 1977

[This law] assures the elderly that America will always keep the promises made in troubled times a half century ago…[The Social Security Amendments of 1983 are] a monument to the spirit of compassion and commitment that unites us as a people.

— President Ronald Reagan, April 20, 1983

Student loan debt is threatening the financial security of an increasing number of older Americans. According to the Consumer Financial Protection Bureau (CFPB), the number of consumers age 60 and older with student loan debt has quadrupled over the last decade. Tragically, a large portion of older student loan borrowers struggle to afford basic needs. Older borrowers are more likely than those without outstanding student loans to report that they have skipped necessary health care needs such as prescription medicines, doctors' visits, and dental care because they could not afford it.[1]

The evidence shows that older borrowers who carry student debt later into their lives often struggle to repay or have defaulted on their loans. Nearly 40 percent of federal student loan borrowers aged 65 and older are in default and are vulnerable to the government's extraordinary collection power.[2]

What is an "Offset"?

Offset is the term used by the federal government to describe the process of reducing, in part or in whole, the amount of a payment that the government would otherwise owe to the debtor. Instead of going to the debtor, that money is then applied to the debt owed to the government. The Debt Collection Improvement Act grants federal government agencies the authority to offset (or seize) federal benefits and other payments (such as federal salaries and tax refunds) to repay debts, including student loans, owed to the government.

Too often, older borrowers with defaulted federal loans have a portion of their Social Security benefits seized to repay student loans taken out to finance their own education or, in the case of Parent PLUS borrowers, their children's education. These involuntary payments cause financial hardship for older borrowers, pushing some into poverty. Yet for many of them, the payments barely make a dent in their total student loan debt.

Voices of Borrowers:
65 and No Hope of Retiring

Note: *The borrower stories included in this report were provided in response to a National Consumer Law Center blog post. The stories appear in the borrowers' own, unedited words. See Student Loan Borrower Assistance, "ICYMI: Lots of Attention to Older Student Loan Borrowers," (Jan. 24, 2017), available at http://www.studentloanborrowerassistance.org/icymi-lots-attention-older-student-loan-borrowers/.*

I put myself through college, when I was a single mother of 3, with the help of federal student loans. My parents died young and I had no one to help me. I appreciated having the financial assistance and never considered it a hand out but a loan that I fully intended to repay. I have been paying back my student loans since I graduated in 1998. I consolidated my loan (several years ago) and have had to defer it a couple of times when money was tight. I recently contacted my lender to find out when my loan would be paid off and was shocked when they said "2038". I couldn't believe it!!! How can that be!!! I told them "I won't live that long!" I will be 65 years old this May with no chance in hell of retiring, ever! I don't know what I am going to do!!! I just keep paying and paying and paying...and praying for a miracle.

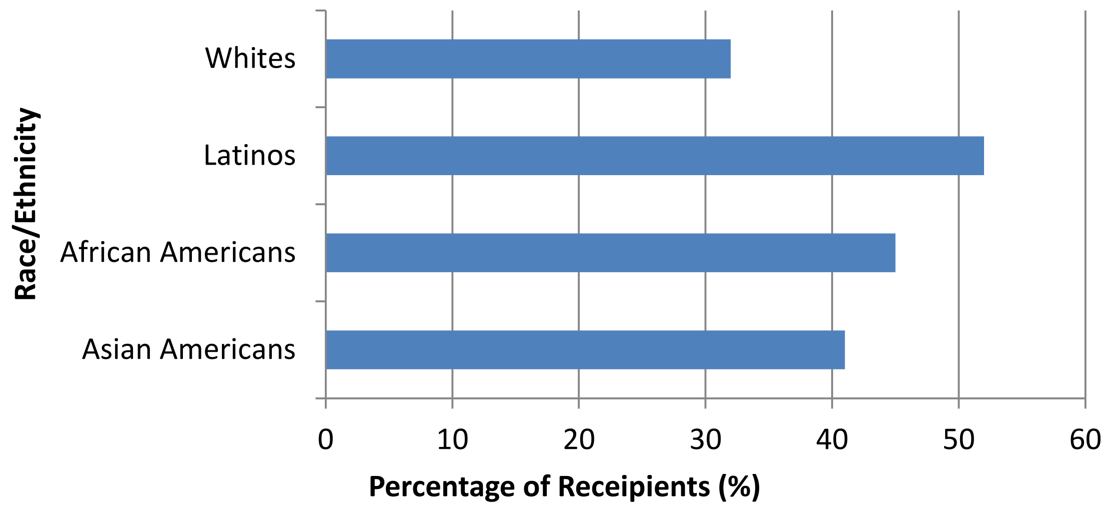
Notwithstanding the dire consequences for borrowers, Social Security offsets account for less than 10 percent of defaulted student loan recovery.[3] The minimal benefits to federal coffers do not justify the significant harm to older Americans caused by offsetting Social Security benefits. Congress must act to protect vulnerable older student loan borrowers and end Social Security offsets.

TAKING SOCIAL SECURITY BENEFITS PUSHES OLDER AMERICANS INTO POVERTY

Social Security helps give aging and disabled Americans peace of mind. As President Reagan stated in signing the Social Security Amendments of 1983, "[S]ocial [S]ecurity must always provide a secure and stable base so that older Americans may live in dignity."[4] The majority of older Americans rely heavily on Social Security. For more than half of beneficiaries, Social Security provides the majority of their cash income.[5] For a third of them, it provides nearly all of their income.[6]

Social Security is a particularly important source of income for older Americans of color because of historical discrimination and current disparities in wages and opportunities for asset development. According to the Center on Budget and Policy Priorities, Social Security represents 90 percent or more of the total income for disproportionately more recipients of color aged 65 and older than for white recipients of the same age[7]. (See chart below.)

Social Security Beneficiaries Aged 65 and Older: Social Security is More Than 90% of Income



Source: Center on Budget and Policy Priorities, Aug., 2016

By seizing Social Security benefits, the federal government is threatening that secure and stable base that hundreds of thousands of older borrowers rely on. Social Security is responsible for lifting 14.5 million elderly Americans out of poverty each year. Without Social Security, it is estimated that 40 percent of Americans aged 65 and older would live below the poverty line. With Social Security, 10 percent live below the poverty line.[8]

The federal government is pushing tens of thousands of older borrowers into poverty by offsetting their Social Security benefits.[9] A Government Accountability Office (GAO) report found that for more than two-thirds of borrowers whose monthly benefit was below the poverty line, the money deducted from their Social Security benefits was enough only to pay their loan fees and interest, so the principal amount of the debt was not even reduced. With no statute of limitations on student loan collections and almost no bankruptcy options, this means that these borrowers could have their benefits seized for the rest of their lives–and without ever paying off their loans or even making a dent in the balance owed.

In practical terms, Social Security offsets do not help borrowers pay off their loans nor do they result in a large recovery for the government. The effect of the government's offset power is essentially to punish older and disabled borrowers who are in default and to push many into extreme poverty.

PROTECTIONS FOR OLDER BORROWERS ARE OUTDATED AND INSUFFICIENT

Social Security and other federal benefits used to be secure. The rule was that creditors, whether government or private, could not touch these benefits. In 1996, Congress increased the debt collection powers of federal agencies by enacting the Debt Collection Improvement Act (DCIA).[10] Through the DCIA, Congress granted federal government agencies the authority to offset (or seize) formerly exempt federal benefits to collect debts, such as student loans, owed to the government.[11] Social Security and other critical benefits, including certain Railroad Retirement and Black Lung benefits, were suddenly at risk of being seized.

> Despite inflation and increases in the cost of living, the dollar amount of Social Security benefits protected from seizure has not changed in 20 years.

There are rules designed to protect a portion of each Social Security recipient's benefits from being seized. Unfortunately, the DCIA only protects $9000 per year or $750 per month from being offset.[12] Despite inflation and increases in the cost of living, the dollar amount of Social Security benefits protected from seizure has not changed in the 20 years since the statute passed, and $9000 per year is now less than 75% of the federal poverty level of $12,060.[13] Older student loan borrowers need and deserve better protection of their Social Security benefits.

Congress originally included a ten-year time limit on offsets in the DCIA, meaning that the government could not use Social Security offsets to collect debts that had been outstanding for more than 10 years. However, in 2005, the U.S. Supreme Court held that the limit did not apply to student loan debtors.[14] Ultimately, Congress repealed the DCIA's ten-year limit for all types of debt in 2008.[15] As a result, an older borrower whose student loans are in default can face Social Security offsets for decades. No 80- or 90-year-old should be stuck trying to make ends meet with less money in their budget because of offsets for loans that are 30, 40, or 50 years old.

Voices of Borrowers: Offset Leaves Borrower with Just $338 a Month

I went into default and federal government started garnishing my paychecks for the last 2 years. In November I retired now the government is garnishing my Social Security. I make $1088.00 a month and they are taking $163.00 a month. My rent is $650.00, not including electric this leaves me $338.00 a month for everything else. This is just unbelievable. I have no one else, I am a widow.

Existing protections are inadequate. Far too many older student loan borrowers languish in default because they receive insufficient information about the range of options for seeking relief from the offsets, including options that could help them cancel their loans. A large percentage of these older borrowers qualify to have their loans cancelled under the disability discharge program. Yet, due to administrative and other barriers, they do not apply for the program.[16]

Even those who are not eligible for a discharge could experience significant relief if only they were able to get out of default. Whereas defaulted low-income borrowers may face offsets of hundreds of dollars, low-income borrowers in good standing with the same amount of debt have notably lower payment obligations—as low as $0 a month. Unfortunately, even when older borrowers are actively taking steps to get out of default, the Social Security offsets often continue, impeding their ability to follow through.

Social Security offsets imperil the financial stability of older borrowers. Because there are no caps on how long offsets can last, some older borrowers and their incomes may be in jeopardy for the remainder of their lives. Older borrowers deserve better. It is time for Congress to act.

POLICY SOLUTION: END SOCIAL SECURITY OFFSETS

Social Security offset is an extraordinary collection tool. It is time to reexamine this practice and weigh the costs of collecting small amounts of money from our most vulnerable populations — for whom those small amounts can mean the difference between getting three meals a day and necessary medication, and going without. The practice of offsetting Social Security benefits needs to end.

> The Protection of Social Security Benefits Restoration Act provides the ideal solution for protecting disabled and/or older borrowers.

Fortunately, Sens. Ron Wyden (D-Ore.) and Sherrod Brown (D-Ohio) along with ten other Senators have introduced Senate Bill S. 959, the Protection of Social Security Benefits Restoration Act.[17] This bill would prohibit the government from garnishing borrowers' Social Security disability and retirement checks to pay for defaulted student loans.

The Protection of Social Security Benefits Restoration Act provides the ideal solution for protecting disabled and/or older borrowers. However, in the current political climate, passage of this bill would be challenging. At a minimum, we recommend steps aimed at alleviating the suffering of Social Security recipients. These steps include:

1. Reinstate a Ten-Year Time Limit on Social Security Offsets

Congress should amend both the Higher Education Act and the Debt Collection Improvement Act to eliminate the risk of perpetual offsets by reinstating the ten-year limit on offset of Social Security benefits.

2. Use a Fair Formula to Ensure Student Loan Payments Do Not Push Seniors and People with Disabilities into Poverty

A. Offset Only the Amount that would be Collected Under an Income-Driven Repayment Plan

Given that borrowers in default may pay thousands of dollars more per year than if they were in an income-driven repayment plan, the formula used to determine the amount of the offset is unnecessarily punitive. The income-driven repayment formula requires that borrowers repay a certain percentage of their adjusted gross income above 150 percent of the federal poverty level for their family size. Using this formula would eliminate the risk that student loan repayment could push anyone into poverty. Furthermore, because the formula is based upon federal poverty standards, it automatically adjusts each year. Notably, complaints to the Consumer Financial Protection Bureau (CFPB) from older consumers show that problems with loan servicing cause many borrowers to have trouble accessing income-driven repayment plans, which leads many older borrowers to initially default.[18]

B. At a Minimum, Apply Cost of Living Increases to the $9,000 Exemption

The fact that Congress has not increased the amount of Social Security that is protected from offset in *more than 20 years* is inexcusable in light of the significant increase in cost of living over that time. At a minimum, Congress should index the $9,000 exemption to cost of living or inflation increases.

3. Make it Easier for Social Security Recipients Facing Offset to Apply for Suspension or Reductions Based on Hardship

Under current practice, the U.S. Department of Education and some guaranty agencies allow Social Security recipients to apply for a reduction or suspension of the offset due to financial hardship. But the GAO found that information about this option is not generally available because neither the Department's website nor forms sent to borrowers regarding offset inform borrowers about these options.[19] This is in contrast to the Administrative Wage Garnishment program, which specifically allows borrowers to raise hardship as a defense to garnishment and has information readily available to borrowers.[20] The lack of information to borrowers facing Social Security offset is unacceptable.

Furthermore, some borrowers with loans held by guaranty agencies have not been able to apply for reductions or suspension of the offset due to financial hardship. Those guaranty agencies that do provide

Voices of Borrowers:
After Offset, Reduces Use of Prescription Medication

The 15% that is taken each month, BTW I'm 69 years old. I'm a widower on my own and s s is my only money, .I skip doctors and have taken meds on an every other day basis. … It's very hard live so poorly. The 15% is an enormous burden.

reductions or suspensions for financial hardship have applied inconsistent standards for what they consider to be hardship. Whether a borrower is entitled to reduce or suspend the offset should not depend on the entity holding the loan.

RECOMMENDATIONS

Congress should end Social Security offsets by passing S. 959, the Protection of Social Security Benefits Restoration Act.

If it is unable to pass S. 959, at a minimum, Congress should:

1. Reinstate a ten-year time limit on Social Security offsets;
2. Implement a fair formula to ensure student loan payments do not push seniors and people with disabilities into poverty;
    A. offset only the amount that would be collected under an income-driven repayment plan; or
    B. at a minimum, apply cost of living increases to the $9,000 exemption; and
3. Explicitly create a borrower right to suspension or reduction of federal offset based on hardship to ensure that all borrowers have this right and that it applies consistently to all federal loan borrowers.

The U.S. Department of Education should ensure that borrowers subject to offset receive information about the ability to suspend or reduce the amount of their offsets, both through its notification of offset sent to borrowers and on its website.

ENDNOTES

[1] Consumer Financial Protection Bureau, Office for Older Americans & Office for Students and Young Consumers, Snapshot of Older Consumers and Student Loan Debt (Jan. 2017).
[2] U.S. Gov't Accountability Office, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief*, GAO-17-45 (Dec 19, 2016).
[3] Id.
[4] U.S. Social Security Administration, Presidential Statements, President Ronald W. Reagan (Apr. 20, 1983), available at https://www.ssa.gov/history/reaganstmts.html.
[5] Center on Budget and Policy Priorities, Policy Basics: Top Ten Facts about Social Security (updated Aug. 12, 2016) available at http://www.cbpp.org/research/social-security/policy-basics-top-ten-facts-about-social-security.
[6] Id.
[7] Id.
[8] Id.
[9] *See* U.S. Gov't Accountability Office, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief*, GAO-17-45, 26-28 (Dec 19, 2016).
[10] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (chapter 10).
[11] 31 U.S.C. § 3716.
[12] 31 U.S.C. § 3716(c)(3)(A)(ii).
[13] 82 Fed. Reg. 8831 (Jan. 31, 2017).
[14] *Lockhart v. U.S.*, 126 S. Ct. 699 (2005).
[15] 31 U.S.C. § 3716, as amended by Pub. L. No. 110-234, § 14219(a), 122 Stat. 923 (May 22, 2008) and Pub. L. No. 110-246, § 14219(a), 122 Stat. 1651 (June 18, 2008).
[16] U.S. Gov't Accountability Office, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief*, GAO-17-45, 31 (Dec 19, 2016).
[17] S.959 - Protection of Social Security Benefits Restoration Act, 115th Congress (2017-2018) available at: https://www.congress.gov/bill/115th-congress/senate-bill/959.
[18] Consumer Financial Protection Bureau, Office for Older Americans & Office for Students and Young Consumers, Snapshot of Older Consumers and Student Loan Debt (Jan. 2017).
[19] U.S. Gov't Accountability Office, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief*, GAO-17-45, 41 (Dec 19, 2016).
[20] U.S. Dep't of Educ., Federal Student Aid, Administrative Wage Garnishment, https://myeddebt.ed.gov/borrower/wageGarnishmentNavigate.action (last visited Apr. 29, 2017).

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