

Testimony before the  
GOVERNMENT REFORM COMMITTEE  
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY AND FINANCIAL  
MANAGEMENT

regarding

"The Debt Collection Improvement Act"

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Mr. Chairman and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding the Debt Collection Improvement Act (DCIA). We offer our testimony here on behalf of our low-income clients. The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states that represent low-income and elderly individuals on consumer issues.<sup>1</sup>

### **Balancing Government Collection Powers and Consumer Protections**

We support the governmental interest in collecting overdue debts. Congress acknowledged this important interest when it passed the DCIA in 1996. Collecting money, however, is not the only issue to consider when evaluating the DCIA. The government's unique and powerful collection powers were never meant to be unlimited. The collection programs associated with the DCIA must be measured not only in dollars, but also based on how well the agencies respect the rights of the consumers involved in the process.

The government's collection powers must be carefully balanced with consumer protections. This is critical for many reasons. First, many consumers have valid defenses to collection, including in the case of student loans, the right to cancel debts completely

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<sup>1</sup> In addition, NCLC publishes and annually supplements sixteen practice treatises which describe the law currently applicable to all types of consumer transactions, including Fair Debt Collection (4<sup>th</sup> ed. 2000 and Supp.) and Student Loan Law (2d. ed. 2002).

in limited circumstances. These consumers have a constitutional right to due process—to raise defenses in a neutral forum before a neutral arbiter. Sadly, these rights are routinely denied or provided in the most haphazard and ineffective ways imaginable. As a result, too many elderly and disabled consumers are losing the money they need to survive because of debts they may not have to pay or may not owe.

Some consumers, despite their best efforts and intentions, are simply unable to repay their debts. There is a cost to pursuing these most vulnerable members of society—both in human and financial terms. In human terms, a consumer who became disabled later in life may now find she simply can't continue to pay back the student loan she took out thirty or forty years ago. Offsetting a portion of her Social Security may mean the difference between getting all the food or prescription drugs she needs that month—or not. In financial terms, the cost of trying to collect from those who simply don't have much is often greater than the meager amounts, if any, which ultimately come back to the government.

Balancing the government's interest in collecting its debts with consumer protections is not easy. Fortunately, the Constitution of the United States provides a general guide to due process protections. More specifically, Congress provided some guideposts when it passed the DCIA in 1996. For example, the administrative offset section of the DCIA provides that agencies may offset debts only after giving written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, an explanation of debtor's rights, an opportunity to inspect and copy the records of the agency related to the claim, an

opportunity for a review, and an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.<sup>2</sup> Unfortunately, congressionally mandated consumer protections such as these are rarely carried out in a meaningful way by government agencies or their collection agents.

I would like to briefly comment on ways in which these minimum protections have in many cases been ignored. I will follow with recommendations to strengthen consumer protections. My testimony focuses on the Department of Education and collection of student loan debts. I focus my comments in this area because we have most closely followed these developments.

### **Use of Private Debt Collectors**

Some have said that the Department of Education's privatization of collections is a success story and should be a model for other agencies such as the IRS. I'm sorry to tell you that from the consumer perspective, this is not true. Private collectors of student loans have deliberately deceived consumers by misrepresenting themselves as the Department of Education. They've overcharged consumers for collection fees, used misleading telegrams to trick borrowers, browbeaten borrowers into unaffordable payment plans, threatened them with actions that collectors can't take, and pressured consumers to borrow from relatives.

Some of the abuses in the student loan context have specifically arisen because of the fact a federal government program is involved. Student loan borrowers have many important rights, such as discharges, deferments, different payment options, and

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<sup>2</sup> 31 U.S.C. §3716(a)(1).

exemptions, creating a complex scheme for collections. Yet many private collectors do not have enough knowledge about these schemes. As a result, consumers are routinely deprived of important options to which they are legally entitled. Even worse, some private collectors misrepresent these rights or steer consumers into options more profitable for the collector. For example, collectors have been known to strong-arm student loan borrowers into agreeing to payment plans that the borrowers could not afford and did not want, despite the consumer's rights under the Higher Education Act to a reasonable and affordable payment plan.<sup>3</sup> Collectors have threatened to offset federal benefits for SSI recipients, even though SSI benefits are protected. They steer consumers into loan refinancing options that may not be appropriate for the consumers. Some collectors aggressively threaten wage garnishments, failing to inform or misrepresenting the rights of consumers to hearings and exemptions. Others charge collection fees that exceed the amounts authorized by Department of Education regulations.<sup>4</sup>

Student loan debt collection contacts, particularly by private collectors and guarantors, involve a startling amount of deceptive, unfair and illegal conduct. There are many explanations for this high level of abuse, including:

- The fact that millions of student loan obligations are handled on a “wholesale” basis, with little or no attention paid to the circumstances of individual borrowers.
- Remedies available to collect on student loans are both unique and easily misunderstood and collectors often misrepresent the exact nature of these remedies when they send collection letters.

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<sup>3</sup> See, e.g., *Arroyo v. Solomon and Solomon*, 2001 WL 1590520 (W.D.N.Y. 2001).

<sup>4</sup> See, e.g., *Padilla v. Payco General American Credits*, 161 F. Supp. 2d 264 (S.D.N.Y. 2001).

- The complexity of the student loan program leads to confusion about who is collecting on a debt and makes it easy for a collector to misrepresent itself as the government.<sup>5</sup>
- Private collection agencies are delegated complex responsibilities such as determining the monthly payments for reasonable and affordable payment plans. These collection agencies also help determine if borrowers have defenses to collection procedures, even though the collection agencies' financial incentive is not to offer reasonable and affordable plans or to acknowledge defenses.

### **Trampling of Due Process Rights**

Student loan borrowers have a constitutional right to due process, including the right to fair hearing before an independent and neutral arbiter. The Department of Education rarely affords borrowers the opportunity to exercise these rights in a meaningful way. Even those rights that exist in the regulations rarely exist in practice. The typical student loan debtor will usually get a notice of government collection action. Getting more information, however, can be a monumental task. Getting through by phone to the Department of Education (or Treasury) and speaking to a live person is a difficult process at best. In all too many cases, the contact is with a collection agent who knows nothing about borrower rights and is most interested in getting the borrower to pay as soon as possible.

In those cases where a hearing does occur, it is usually held before an employee of the collection agency or possibly an employee with the Department of Education collection department. These are hardly neutral forums. The reality is that the minimum standards for procedural due process established in landmark Supreme Court cases such

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<sup>5</sup> See, e.g., *Bridger v. Nationwide Credit*, 1998 WL 729747 (N.D. Ill. 1998) (denying motion to dismiss of collector whose collection letter had large bold heading "U.S. Department of Education.").

as Goldberg v. Kelly<sup>6</sup> simply do not exist for student loan borrowers facing wage garnishment, benefit offset, or tax intercept.

In general, only the savviest of consumers can figure out how to pore through the Department of Education web site and perhaps figure out how to challenge a particular collection process. Everyone else ends up mired in a process that is inconsistent and difficult to navigate. The consumer will certainly have trouble trying to learn the full range of rights and defenses by reading the form collection notices sent by the Departments of Education and Treasury. At worst, these notices focus on options that are most advantageous for the debt collectors-such as loan consolidation-rather than providing information about all available defenses and repayment options.

### **Social Security and Federal Benefits Offsets**

The DCIA allows federal agencies to offset certain federal benefits, including Social Security. This is an extraordinary power because Social Security payments have generally been considered off limits from the reach of creditors, including government creditors. As the 10<sup>th</sup> Circuit stated in Tom v. First American Credit Union, “Social Security funds were never intended to serve as collateral for cars or homes in the first place; they were intended to provide the elderly with a means of subsistence.”<sup>7</sup>

The federal benefits provisions of the DCIA are unprecedented. In acknowledgment of these extraordinary powers, Congress provided heightened

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<sup>6</sup> 397 U.S. 254, 90 S. Ct.1011, 25 L.Ed. 2d 287 (1970).  
Mar 23, 1970

<sup>7</sup> 151 F. 3d 1289, 1293 (10<sup>th</sup> Cir. 1998).

protections for consumers facing offsets. In addition to the due process requirements noted above, Congress exempted the first \$9,000 of benefits and later, by regulation, specifically exempted SSI. Congress also limited the offset of federal benefits by prohibiting collection for debts older than ten years.<sup>8</sup>

Unfortunately, and with devastating results, these consumer protections have been largely ignored. The Department of Education continues to refer very old debts to the Department of Treasury, including debts for student loans that are twenty or even thirty years old. To date, the agencies have also failed to set up a user-friendly system for consumers to request full or partial hardship waivers. It is far too difficult for consumers facing offset to find out more about their rights, including the right of many SSDI recipients to cancel their student loans completely through a disability discharge.

The result? Take the example of Glenn Edgmon, an elderly disabled man living in a small town in Oklahoma. Mr. Edgmon was one of the plaintiffs in a lawsuit the National Consumer Law Center (NCLC), along with Public Citizen and Oakland-Livingston Legal Aid, filed against the Departments of Education and Treasury. Mr. Edgmon received one student loan back in the mid-1970's. He fully intended to complete his college education, but had to leave school to support his family. Shortly thereafter he became severely disabled. Mr. Edgmon lived for a time in his car. Eventually, he was confined to a wheelchair and began receiving SSDI payments. Now over 65, he receives Social Security retirement benefits of about \$827 per month, just above the poverty level. His benefits provide the minimum he needs to survive. The

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<sup>8</sup> 31 U.S.C. §3716(e)(1).

original loan of about \$2500 from the 1970's is now a debt obligation of over \$4,000--an obligation that Mr. Edgmon unfortunately is not able to pay.

Mr. Edgmon, like many other disabled borrowers, should have been able to cancel his loan completely through a permanent and total disability discharge. For years, he didn't know about this right and no one ever told him about it. When he finally learned of the disability discharge from a legal services attorney and sent in an application, the Department of Education denied the application because Mr. Edgmon failed to fill in the doctor's license number. In the meantime, the Department sent the debt to Treasury and Treasury began offsetting about \$77 per month from Mr. Edgmon's sorely needed benefits.

Mr. Edgmon was fortunate. He was able to get help from Legal Aid of Oklahoma as well as NCLC and Public Citizen. He successfully challenged the government's right to use administrative offset for debts older than ten years.<sup>9</sup> He was also finally granted his disability discharge. He was fortunate because most borrowers in his situation have no idea that they might be eligible for a cancellation and no idea that the DCIA limits administrative offset for older debts.

To be clear, Congress set limits on all of the powers established by the DCIA, but they set the bar particularly high for federal benefits offsets. This is because the benefit offset program affects some of the neediest and most vulnerable members of our society. The Department of Education could still pursue Mr. Edgmon for the nearly thirty year old student loan debt if he some day makes a miraculous recovery and is able to get a job

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<sup>9</sup> See *Guillermety v. Secretary of Education*, 241 F. Supp. 2d 727 (E.D. Mich. 2002).

(they could garnish his wages and/or intercept his tax refund). The agency could even sue him if they felt there was something to collect. But as long as he continues to survive solely on Social Security, he should be protected. The Department's continued insistence that it can collect for loans older than ten years is simply wrong.

### **Consumers Must be Protected**

Just as the government's right to collect debts should be enforced, borrowers' rights to minimal protections must also be enforced. The DCIA's success should not be measured in dollars alone.

We call on Congress and the Departments collecting under DICA powers to ensure that consumer rights are protected. Among other changes:

- Congress should require the agencies to report not only on dollars collected, but also on how they are complying with the notice and hearing provisions of the DCIA.
- All agencies must develop and enforce regulations that meet constitutional and statutory due process standards. At a minimum, collection notices should inform consumers that they might have defenses to payment of the debt, that they have a right to set up reasonable and affordable payment plans, and the right to request a hearing.
- Each agency must set up fair hearing procedures that are truly fair. Consumers must be given the opportunity to choose from a list of neutral arbiters, easy access to records and reports related to their case, and ability to present testimony by phone if the closest agency forum is inconvenient. Agencies must require hearing officers to tape proceedings and to make transcripts available when requested by borrowers. These minimal due process standards have been routine for many years at most government agencies.
- The Department of Education should cease offsetting Social Security benefits to collect old student loans. ("Old" debts are defined as debts that have been outstanding for more than ten years).
- The \$9,000 annual exemption for federal benefits offsets should be raised each year based on cost of living increases.
- The agencies must not delegate inherently government functions, such as conducting fair hearings, to third party debt collectors. Private debt collectors are

not trained to understand and stay up to date on the latest agency rules and regulations. They are trained to collect money. If a borrower informs a collector that he believes he has a defense to the debt, that the amount is wrong, or that he wants to request a hardship waiver, the file should be immediately sent back to the agency.

- Allow private collectors to charge only for collection fees that are both bona fide and reasonable.

## **Conclusion**

Based upon over 30 years of experience on behalf of consumers in debt collection matters, we at NCLC have grave concerns about the implementation of the DCIA. The experience in the student loan context is not the shining success many claim it to be, but a legacy of many borrowers being harassed, deprived of their lawful rights and options, and misled. Consumers must be informed of all of their rights and options in dealing with debts owed to federal agencies. If these rights are not enforced, the DCIA cannot truly be called a success regardless of how many dollars are collected.

Thank you for the opportunity to testify today.