No. 04-881

In the Supreme Court of the United States

JAMES LOCKHART, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the Department of Education can collect defaulted student loans by offsetting a portion of a debtor's Social Security benefits without regard to the ten-year limitation period under the Debt Collection Act, 31 U.S.C. 3716(e)(1), given that Congress has expressly abrogated all otherwise applicable statutes of limitations for the collection of student loans.

PARTIES TO THE PROCEEDING

Respondents are the United States of America; Alberto Gonzales, Attorney General; Margaret Spelling, Secretary of the United States Department of Education; John Snow, Secretary of the United States Department of the Treasury. Respondents were named as defendants/appellees in the court of appeals. All respondents appear in their official capacities only.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 376 F.3d 1027. The order of the district court (Pet. App. 8a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2004. A petition for rehearing was denied on November 4, 2004 (Pet. App. 9a). A petition for a writ of certiorari was filed on December 29, 2004. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions of the Higher Education Act, 20 U.S.C. 1091a, the Debt Collection Act, as amended by the Debt Collection Improvement Act, 31

U.S.C. 3716, and the Social Security Act, 42 U.S.C. 407, are set forth in an appendix to this brief. App., *infra*, 1a-3a.

STATEMENT

1. *Statutory Background*

a. The Student Loan Program

Title IV, Part B of the Higher Education Act of 1965, 20 U.S.C. 1071 *et seq.*, establishes a set of programs commonly known as the Guaranteed Student Loan (GSL) program.[1] The GSL program encourages lenders to make funds available to students who might not otherwise be able to obtain or afford commercial loans to finance the costs of post-secondary education. Under the GSL program, banks that loan money to students receive a guarantee from state or private non-profit organizations that loans will be repaid if borrowers default. 20 U.S.C. 1078(b)(1)(A) and (G). That guarantee is reinsured by the Department of Education under an insurance agreement. 20 U.S.C. 1078(c).

If a student loan borrower defaults on a loan, the state or private guaranty agency reimburses the lender and takes an assignment of the loan. 20 U.S.C. 1078(b)(1); 34 C.F.R. 682.406. The guaranty agency thereafter may request (usually within 45 days of paying the lender) that the Department of Education reimburse the guaranty agency under the insurance agreement. 20 U.S.C. 1078(c)(1)(A); 34 C.F.R. 682.404(a)(1),

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[1] In 1992, Congress renamed the GSL program the Federal Family Education Loan Program. Higher Education Amendments of 1992, Pub. L. No. 102-325, § 411(a)(1), 106 Stat. 510. Because the loans at issue in this case were issued before 1992, we refer to the program as the GSL program.

682.406(a)(9). The guaranty agency then must exercise "due diligence" to collect the debt. 20 U.S.C. 1078(c)(2)(A); 34 C.F.R. 682.410(b)(6) (setting forth collection effort requirements). If the guaranty agency is unable to collect the debt, the loan eventually is assigned to the Department of Education. 34 C.F.R. 682.409(a) and (c)(1).

Soon after the inception of the GSL program, the Department of Education faced the problem of student loan defaults. For instance, "defaults and delinquencies in federal student loan programs increased by more than three hundred percent between 1972 and 1976." *TI Fed. Credit Union* v. *DelBonis*, 72 F.3d 921, 936 (1st Cir. 1995). The problem of student loan defaults has only increased over time. At the end of Fiscal Year 2004, the Department of Education was owed $33.6 billion in delinquent student loan debt. Financial Mgmt. Serv., U.S. Dep't of the Treasury, *Fiscal Year 2004 Report to the Congress: U.S. Gov't Receivables and Debt Collection Activities of Federal Agencies* 6 (visited Aug. 29, 2005) <http://fms.treas.gov/news/reports/debt04.pdf> (*Fiscal Year 2004 Report*). Student loan defaults accordingly constitute a significant financial burden on the federal treasury. S. Rep. No. 204, 102d Cong., 1st Sess. 4-5 (1991); *Brannan* v. *United Student Aid Funds, Inc.*, 94 F.3d 1260, 1264 (9th Cir. 1996) (noting congressional concern about "significant losses to the U.S. Treasury" "due to the 'costs and occurrences of defaults in the program'") (quoting H.R. Rep. No. 383, 99th Cong., 1st Sess. 35 (1985)), cert. denied, 521 U.S. 1106 and 1111 (1997).[2]

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[2] Early problems emerged in the bankruptcy context, as some debtors, shortly after graduation, filed petitions for bankruptcy in order

The frequency and magnitude of student loan defaults reflects in part the widespread availability of federal educational assistance even to individuals who represent poor credit risks. The Department of Education generally offers financial assistance to any individual who attends an eligible educational institution and meets certain need-based criteria. 34 C.F.R. 668.32 (setting forth the general eligibility criteria for student loan assistance), 682.201(a) (GSL Program), 674.9 (Federal Perkins Loan Program), 685.200(a) (Federal Direct Loan Program). In financing federal student loans, the government does not require lenders to evaluate the credit history of the prospective student, nor does the government request any collateral as protection in the event of default. Federal educational loans to students are thus unique: "They are made without business considerations, without security, without cosigners, and rely[] for repayment solely on the debtor's future increased income resulting from the education." H.R. Rep. 595, 95th Cong., 1st Sess. 133 (1977); *In re Segal*, 57 F.3d 342, 348 (3d Cir. 1995) ("[Educational] loans are not based upon a borrower's proven credit-worthiness."); *In re Merchant*, 958 F.2d 738, 740 (6th Cir. 1992) ("[U]nlike commercial transactions * * * student loans are generally unsecured.").

b. Debt Collection By The Federal Government

Various statutes provide the Department of Education with mechanisms for collecting outstanding educa-

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to discharge their federal student loans. H.R. Rep. No. 595, 95th Cong., 1st Sess. 133 (1977); *In re Segal*, 57 F.3d 342, 348 (3d Cir. 1995). The Bankruptcy Code now bars discharge of student loans absent a showing of "undue hardship." 11 U.S.C. 523(a)(8).

tional debt. See, *e.g.*, 31 U.S.C. 3720A (tax refund offset); 5 U.S.C. 5514 (wage deduction for federal employees); 20 U.S.C. 1095a, 31 U.S.C. 3720D (wage garnishment for any employee); see also 11 U.S.C. 523(a)(8) (limiting student loan discharge in bankruptcy). The Department of Justice may also collect such outstanding debt by filing suit against a student loan holder. Lawsuits, however, are not an efficient means of collecting overdue student loans. See, *e.g.*, 137 Cong. Rec. 13,763 (1991) (It is "not cost-effective for the [government] to pursue * * * defaulted loans in small dollar amounts through the judicial process."); see also S. Rep. No. 378, 97th Cong., 2d Sess. 3 (1982) ("[T]he litigation process is sluggish and ineffective" for collecting debts owed to federal agencies.).

In 1982, Congress enacted the Debt Collection Act to authorize federal agencies, including the Department of Education, to collect outstanding debt by administrative offset. Pub. L. No. 97-365, § 10, 96 Stat. 1754. "'[A]dministrative offset' means withholding funds payable by the United States * * * to, or held by the United States for, a person to satisfy a claim." 31 U.S.C. 3701(a)(1). That authority is grounded in the need to avoid "the absurdity of making A pay B when B owes A." *Citizens Bank* v. *Strumpf*, 516 U.S. 16, 18 (1995) (quoting *Studley* v. *Boylston Nat'l Bank*, 229 U.S. 523, 528 (1913)). The Debt Collection Act contains a limitation provision, however, which provides that administrative offset is generally not available to collect a "claim * * * that has been outstanding for more than 10 years." 31 U.S.C. 3716(e)(1).

In 1991, Congress amended the Higher Education Act to abrogate all statutes of limitations that would otherwise be applicable to efforts to collect student

loans. Congress achieved that result in 20 U.S.C. 1091a(a), which provides:

> Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of the amount due from a borrower on a loan made under [Title IV of the Higher Education Act.]

20 U.S.C. 1091a(a)(2); Higher Education Technical Amendments of 1991, Pub. L. No. 102-26, § 3(a), 105 Stat. 124. Congress further expressed that "[i]t is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced." 20 U.S.C. 1091a(a)(1). Accordingly, the Secretary of Education has determined that the Debt Collection Act's ten-year limitation period does not apply to the collection of delinquent student loan debt by administrative offset. See 20 U.S.C. 1091a(a)(2) ("no limitation shall terminate the period within which * * * an offset" may be taken by the Secretary "for the repayment" of student loans); *e.g.*, C.A. Appellants Supp. E.R. (SER) 3, at 35. The Department of the Treasury has concurred in that view. 67 Fed. Reg. 78,937 (2002) (observing that debts for "education loans" "may be collected by offset legally if more than ten years delinquent").

In 1996, Congress enacted the Debt Collection Improvement Act to improve the effectiveness of the administrative offset program under the Debt Collection

Act. Pub. L. No. 104-134, Tit. III, § 31001, 110 Stat. 1321-358. The amendments were designed "[t]o maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools." § 31001(b)(1), 110 Stat. 1321-358; H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. 370 (1996).

The Debt Collection Improvement Act streamlined and centralized the administrative offset program by authorizing the Department of the Treasury, which disburses federal benefits, to conduct administrative offsets on behalf of all federal agencies. Under the newly created Treasury Offset Program, any federal agency with a claim against a debtor, after notifying the debtor that his debt may be subject to administrative offset and giving him an opportunity to dispute the debt or make arrangements to pay it, certifies the debt to the Department of the Treasury. 31 U.S.C. 3716(a), (c)(1)(A), and (c)(6); 31 C.F.R. 901.3(b). If the debtor is entitled to receive payment from the federal government, the Treasury Department offsets those payments against the debts that the person owes to the United States. 31 C.F.R. 901.3; Financial Mgmt. Serv., U.S. Dep't of the Treasury, *Fact Sheet: FMS Debt Collection and the Debt Collection Improvement Act of 1996*, (last modified Mar. 5, 2001) <http://fms.treas.gov/news/factsheets/dcia.html> ("The [Treasury Offset Program] compares the names and taxpayer identifying numbers (TINs) of debtors with the names and TINs of recipients of federal payments. If there is a match, the federal payment is reduced, or 'offset,' to satisfy the overdue debt.").

The 1996 amendments to the Debt Collection Act also explicitly extended the offset program to encompass Social Security benefits. § 31001(d)(1), 110 Stat. 1321-

359. Section 207 of the Social Security Act, entitled Assignment of Benefits, establishes a general rule that no Social Security benefits "shall be subject to execution, levy, attachment, garnishment, or other legal processes." 42 U.S.C. 407(a). Section 207 further provides that "[n]o other provision of law * * * may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." 42 U.S.C. 407(b). Prior to 1996, the Debt Collection Act did not expressly refer to Section 207 of the Social Security Act in authorizing administrative offset. The 1996 amendments revised the Act to state expressly that, "[n]otwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act (42 U.S.C. 407 * * *), * * * all payments due to an individual under * * * the Social Security Act * * * shall be subject to offset under this section." 31 U.S.C. 3716(c)(3)(A)(i).

The Debt Collection Improvement Act also added certain protections for recipients of Social Security benefits. Under the offset program, $9000 of each debtor's annual Social Security benefits is exempt from administrative offset. 31 U.S.C. 3716(c)(3)(A)(ii). Implementing regulations of the Department of the Treasury further limit the amount subject to offset to the lesser of (i) the amount of the debt, including any interest, penalties and administrative costs; (ii) an amount equal to 15 percent of the monthly covered benefit payment; or (iii) the amount, if any, by which the monthly covered benefit payment exceeds $750. 31 C.F.R. 285.4(e).

Following the 1996 amendments, the Department of the Treasury made numerous modifications to its computer systems, regulations, and administrative procedures in order to facilitate the new centralized adminis-

trative offset program. The Treasury Department began implementing the administrative offset program for Social Security benefits in May 2001 with full implementation in 2002. Financial Mgmt. Serv., U.S. Dep't of the Treasury, *Fact Sheet: Delinquent Debt Collection, Fiscal Year 2004, Major Accomplishments* (visited Aug. 29, 2005) <http://fms.treas.gov/news/factsheets/ delinquent_debtcollection.html> ("Offset of Social Security benefit payments, which began in May 2001, was implemented in stages to ensure that payment recipients received appropriate notices of potential offsets, as well as the opportunity to take action to avoid offsets.").

2. *Factual Background*

Between 1984 and 1989, four financial institutions issued nine GSLs to petitioner. SER 1, at 45. Petitioner failed to repay most of his obligations under those loans, and, by March 2002, his debts exceeded $87,000. SER 2, at 5, 16. The Department of Education advises us that, according to its records, the affected guaranty agencies received federal reinsurance for petitioner's delinquent debts between 1991 and 1996. The guaranty agencies made numerous attempts to contact petitioner and to collect on the defaulted loans. After those efforts proved unsuccessful, the guaranty agencies, between 1998 and 2001, assigned each loan to the Department.

The Department of Education also informs us that on August 22, 1999, September 14, 2001, and August 19, 2002, the Department notified petitioner by letter that his student loan obligations were subject to collection by administrative offset. The Department further notified him that he had certain rights to object to administrative offset and that he could avoid offset by making vol-

untary arrangements to repay the debts. SER 1, at 44-46 (Aug. 19, 2002 notice).

In February 2002, petitioner contacted the Department of Education, asserting in part that the collection of his student loans by administrative offset was time-barred. SER 3, at 17-24. The Department responded on March 6, 2002, explaining that the Higher Education Act had abrogated all statutes of limitations on the collection of student loans. *Id.* at 35. The Department of the Treasury advises us that, in May 2002, it began withholding $93 per month from petitioner's Social Security payment by way of administrative offset. When petitioner started to receive additional Social Security benefits, the government correspondingly increased the offset, first to $136.50 per month on March 3, 2003; then to $139.35 on January 2, 2004; and, most recently, to $143.10 per month on January 3, 2005. The Department of Education also advises that as of August 2005, the government has collected on petitioner's loans by Social Security offsets a total of $4327.65 and that the total remaining outstanding debt on petitioner's loans, including interest and administrative fees, is $77,166.03.

3. ***Proceedings Below***

In March 2002, petitioner, proceeding pro se, filed a complaint in federal district court, objecting to the offset of his Social Security benefits. SER 2, at 1-23. The complaint appeared to arise under the Bankruptcy Code and alleged that petitioner had "committed acts of bankruptcy and thereby 'filed' for bankruptcy." *Id.* at 15. The complaint stated that the government's collection efforts were subject to an automatic stay, *id.* at 15, 17, and urged the district court to impose civil sanctions on the government and/or to force the parties to enter into

a settlement agreement. *Id.* at 19-20. The complaint also stated that the government's attempt to "garnish debtor's [Social Security] payments by administrative offset" was "time barred" under 31 U.S.C. 3716(e)(1) because "more than 10 years have passed since debtor's education loans became outstanding." SER 2, at 14.

The district court, unable to discern the legal theory in petitioner's complaint, directed him to show cause why the complaint should not be dismissed for failure to state a claim. SER 10, at 1. Petitioner filed a response ten days later, but the district court was still unable to identify a viable federal claim. Pet. App. 8a. The court thereafter dismissed the complaint. *Ibid.*

On appeal, after briefing in which petitioner appeared pro se, the court of appeals ordered the appointment of counsel to represent petitioner. The parties subsequently filed supplemental briefs that focused on whether the ten-year statute of limitations in the Debt Collection Act applied to the collection of student loans by Social Security offset.[3]

The court of appeals held that petitioner's complaint, liberally construed, sufficiently raised the argument that the administrative offset of petitioner's Social Security benefits was time-barred. Pet. App. 2a-3a. The court of appeals then rejected petitioner's claim on the

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[3] The government assumed for purposes of the appeal that petitioner's delinquent student loans were over ten years old. C.A. Supp. Br. 11 n.4. As explained in the United States' response to the petition for a writ of certiorari (at 14-16), the government has since determined that the Department of Education had a claim beginning in 1991 when it paid reinsurance to a guaranty agency with respect to one of petitioner's loans. Accordingly, at the time the complaint was filed in 2002, the collection of at least one of petitioner's loans would have been barred if a ten-year limitations period applied.

merits. The court of appeals observed that the Higher Education Act, as amended in 1991 through the enactment of Section 1091a(a), "overr[ode]" the Debt Collection Act's ten-year statute of limitations "as applied to student loans." *Id.* at 6a. The court further stated that, "in 1996, Congress explicitly authorized the offset of Social Security benefits." *Ibid.* The statutory scheme thus made clear that the ten-year limitation period in the Debt Collection Act does not apply to the collection of student loans by Social Security offset. *Ibid.*

SUMMARY OF ARGUMENT

Social Security offsets to reduce delinquent student loan debt, like all other efforts to collect federal student loans, are not subject to any statutes of limitations.

A. The Higher Education Act in Section 1091a(a) abrogates all statutes of limitations for the collection of student loan debt. That provision states: "Notwithstanding any other provision of statute, * * * no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken" to collect on a federal education loan. 20 U.S.C. 1091a(a)(2). Congress has thereby exempted student loan collection from any limitations period, including the ten-year limit specified in the Debt Collection Act, 31 U.S.C. 3716(e), for the recovery of debt by administrative offset. That conclusion is confirmed by all three federal agencies charged with administration of the relevant enactments, and that reasonable judgment is entitled to deference.

B. Petitioner erroneously relies on the fact that Congress passed Section 1091a(a) in 1991, whereas Congress did not expressly make Social Security benefits subject to offset until the 1996 amendments to the Debt

Collection Act. That sequence of events provides no basis for ignoring the plain terms of Section 1091a(a), which expressly abrogates any statutes of limitations that would otherwise apply to a student loan debt for which repayment is sought by the Department of Education. In any event, the chronology demonstrates that when Congress expressly made Social Security benefits subject to offset in 1996, Congress had already, when it passed Section 1091a(a) in 1991, manifested its clear intent that the Department of Education not be subject to time restrictions in its collection of delinquent student loans.

C. Petitioner also seeks to carve out a special rule for Social Security benefits by relying on Section 207 of the Social Security Act, which requires a statute to make an "express reference" before Social Security benefits may be subject to "legal process." 42 U.S.C. 407(a) and (b). Congress made an "express reference" to Section 207 of the Social Security Act, however, in the 1996 amendments to the Debt Collection Act. That reference is contained in 31 U.S.C. 3716(c)(3)(A)(i), which provides that Social Security benefits "shall be subject to offset" "[n]otwithstanding * * * section[] 207 * * * of the Social Security Act."

Congress was not required to make a further "express reference" in Section 1091a(a) of the Higher Education Act, because that Act does not purport to modify any part of the Social Security Act. Indeed, Section 1091a(a) does not authorize offset or establish any legal process for the collection of student loan debt. Rather, the Secretary of Education's authorization to offset Social Security benefits is set forth in the Debt Collection Act, which, as mentioned, contains an "express reference" to Section 207.

D. The Department of Education's exemption from all statutes of limitations for federal student loan collection is necessary to address the difficult and substantial problem of outstanding student loan defaults, which to date exceed $33 billion. The Department of Education finances student loans without regard to the credit-worthiness of the recipient, and many recipients unfortunately fail to pay their obligations to the United States. The Department of Education relies on a number of statutory collection mechanisms to recover that outstanding debt from individuals who for many years (and even decades) have failed to repay their student loan obligations to the United States. Social Security offsets to collect loans over ten years old constitute an integral part of the Department's collection efforts.

E. Adequate safeguards protect Social Security beneficiaries from the financial burden of offsets to pay student loan debts. Debtors are given notice and opportunity to contest the debt or to enter into a written agreement to repay the debt. There are also statutory and regulatory limits on the amount of offset that may occur, and an individual may obtain an administrative discharge of the debt if he is unable to work or earn money because of a medical condition of indefinite duration.

ARGUMENT

NO STATUTE OF LIMITATIONS APPLIES TO THE COLLECTION OF STUDENT LOAN DEBT BY ADMINISTRATIVE OFFSET OF SOCIAL SECURITY BENEFITS

Congress has authorized the Department of Education to collect defaulted federal student loans without regard to any limitations periods. There is no basis for a different result when the Department of Education

seeks to collect student loan debt by offsetting a debtor's Social Security benefits.

A. The Higher Education Act's Abrogation Of All Statutes Of Limitations Overrides The Debt Collection Act's Ten-Year Limitation Period

The Debt Collection Act authorizes federal agencies, including the Department of Education, to collect outstanding debt by administrative offset. 31 U.S.C. 3716. Thus, if a debtor is entitled to receive federal payments, those payments can be offset against any debt that the individual owes to a federal agency. 31 U.S.C. 3716(a) and (c). Moreover, since 1996, Social Security benefits unquestionably have been a source of federal monies available for administrative offset. The Debt Collection Act, as amended by the Debt Collection Improvement Act of 1996, provides in 31 U.S.C. 3716(c)(3)(A)(i) that, "[n]otwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act (42 U.S.C. 407 * * *), * * * all payments due an individual under * * * the Social Security Act * * * shall be subject to offset" under the Debt Collection Act.

The dispute in this case concerns the time period during which delinquent student loans may be collected by administrative offset of Social Security benefits. As mentioned, the Debt Collection Act in 31 U.S.C. 3716(e)(1) contains a ten-year statute of limitations that is generally applicable to debt collection by administrative offset. Section 1091a(a) of the Higher Education Act, however, expressly overrides all statutes of limitations that would otherwise apply to the collection of student loan debts, including by administrative offset. Section 1091a(a) thus states that, "*[n]otwithstanding any other provision of [law], no limitation shall terminate*

*the period within which * * * an offset*" can be taken by the government "for the repayment of" educational loans. 20 U.S.C. 1091a(a)(2) (emphasis added). Section 1091a(a) thus unambiguously bars application of a ten-year limitation that would otherwise apply under the Debt Collection Act, 31 U.S.C. 3716(e)(1). Accordingly, the court of appeals correctly held that there is no time bar to the offset of petitioner's Social Security benefits in order to collect petitioner's defaulted loans. Pet. App. 5a-6a.

The above conclusion is also the consistent view of all three federal agencies charged with administration of the relevant statutes. Thus, the Department of the Treasury and Department of Education have used the Treasury Offset Program to offset Social Security benefits to collect student loan debt, regardless of the age of the debt. See pp. 6, 10, *supra*. The Social Security Administration agrees that the Social Security Act does not bar the offset of Social Security benefits to satisfy student loan debt that has been outstanding more than ten years. That uniform view of all three relevant agencies is entitled to considerable weight. See, *e.g.*, *Bragdon* v. *Abbott*, 524 U.S. 624, 642 (1998) ("[T]he well-reasoned views of the agencies implementing a statute 'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.'") (quoting *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944)); see also *Washington State Dep't of Soc. & Health Servs.* v. *Keffeler*, 537 U.S. 371, 383 n. 6 (2003).

B. The Higher Education Act's Abrogation Of All Statutes Of Limitations Is Fully Applicable To The Debt Collection Act As Amended In 1996

1. Notwithstanding the clarity with which Congress abrogated all limitations periods that would otherwise apply to the Secretary's efforts to collect delinquent student loans, petitioner argues (Pet. Br. 14, 16, 18) that the "chronology" of the relevant enactments demonstrates that Section 1091a(a) of the Higher Education Act does not apply to the offset of Social Security benefits. He observes that Section 1091a(a) was adopted in 1991, while Social Security benefits were not expressly subject to offset until Congress amended the Debt Collection Act in 1996. From that sequence of events, he concludes that Congress in 1991 could not have intended that Section 1091a(a) would apply to administrative offsets of Social Security benefits because such benefits were not subject to offset until 1996. Pet. Br. 16-20. In a similar vein, petitioner argues that Section 1091a(a) applies to only "*existing* limitations" and not to "future enactments," Pet. Br. 19, and therefore Section 1091a(a) cannot "spring forward" to override limitations periods that are relevant to an express post-1991 enactment authorization to offset Social Security benefits, Pet. Br. 22.

The unqualified text of the Higher Education Act and the conventional methods of interpreting the United States Code, however, refute those contentions. Section 1091a(a) speaks in sweeping terms: "*Notwithstanding any other provision of statute, regulation, or administrative limitation*, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of" student

loans. 20 U.S.C. 1091a(a)(2) (emphasis added). The phrase "[n]otwithstanding any other provision of [law]" signals Congress's unmistakable intent to trump *any* limitation period, regardless of the date of the authorization for the Department to collect student loan debt. As this Court has "noted previously in construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section." *Cisneros* v. *Alpine Ridge Group*, 508 U.S. 10, 18 (1993); see *Illinois Nat'l Guard* v. *FLRA*, 854 F.2d 1396, 1403 (D.C. Cir. 1988) (concluding with respect to statute containing "[n]otwithstanding any other provision of law" clause that "[a] clearer statement is difficult to imagine" and that "the preemptive language is powerful evidence that Congress did not intend any other, more general, legislation, whenever enacted, to qualify" the statute) (quoting *New Jersey Air Nat'l Guard* v. *FLRA*, 677 F.2d 276, 283 (3d Cir. 1982)).

The statutory language of Section 1091a(a) conclusively establishes Congress's intent for the provision to operate with respect to the collection of *any* student loan debt, by *any* means. Petitioner thus errs in relying on the fact that one of the primary motives for enacting Section 1091a(a) was an intent to overrule a lower court decision limiting the period during which the Department could offset tax refunds. Pet. Br. 8, 19 (citing 137 Cong. Rec. 6458 (1991) (statement of Rep. Ford)). Legislation "often [goes] beyond the principal evil [at which the statute was aimed] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore*

Servs., Inc., 523 U.S. 75, 79 (1998); accord *H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 492 U.S. 229, 248 (1989).

Moreover, the fact that a statute "can be 'applied in situations not expressly anticipated by Congress'" is "irrelevant" "in the context of an unambiguous statutory text." *Pennsylvania Dep't of Corrs.* v. *Yesky*, 524 U.S. 206, 212 (1998) (quoting *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 499 (1985)); accord *Union Bank* v. *Wolas*, 502 U.S. 151, 158 (1991) ("The fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning."). As stated, the clear text of Section 1091a(a) abolishes any limitations period, regardless of the nature of the collection mechanism, and regardless of the date of passage of the law that enables that collection mechanism.

Section 1091a(a)'s broad reach to any collection mechanism, and to any statutes of limitations, is also confirmed by the unmistakable expression of congressional purpose "to ensure that obligations to repay loans and grant overpayments are enforced without regard to *any* Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced." 20 U.S.C. 1091a(a)(1) (emphasis added). Congress's repeated indication that Section 1091a(a) would override "any" statutes of limitations expresses the legislature's intent that the provision would be given its natural "expansive meaning." *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997).

Petitioner's construction of Section 1091a(a), moreover, unjustifiably would freeze that provision as of 1991, and impose the bizarre and burdensome requirement that Congress must reenact Section 1091a(a) any time Congress enacts or modifies a new limitations pe-

riod applicable to any method of debt collection. That approach is wholly inconsistent with the basic understanding that a statute covers applications that fall within the statute's plain text even if not contemplated by Congress at the time of passage, see p. 19, *supra*, and that Congress legislates with presumed knowledge of the then-existent Code. See *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 184-185 (1988) ("We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts."). For instance, were Congress to amend the Debt Collection Act to provide a new limitations period of 15 years in which all federal agencies could collect debt by administrative offset, petitioner's view presumably would prevent Section 1091a(a) from "spring[ing] forward" (Pet. Br. 22) and would require the Department to be bound by the new 15-year statute of limitations. That counter-intuitive result would defeat Congress's obvious intent to remove any time restrictions for the collection of student loan debt.

In any event, even if the chronology of the enactments at issue in this case were relevant, the sequence would support applying the plain terms of Section 1091a(a). Petitioner asserts (Pet. Br. 21) that the 1996 amendment included "its own provision" "prohibit[ing]" use of the offset mechanism to collect debts after ten years, and suggests that this purportedly subsequent enactment should trump the 1991 enactment of Section 1091a(a). But petitioner errs in his description of the 1996 amendment. That amendment did not enact into law "its own provision" imposing a reinvigorated ten-year limitation period; rather, it merely redesignated the pre-existing subsection (previously codified as 31 U.S.C. 3716(c)(1) (1994)) that contained the language

imposing the limitation period, without restating or re-enacting the operative statutory language in any way. § 31001(d)(2)(C), 110 Stat. 1321-359 ("redesignating subsection (c) as subsection (e)").

Petitioner's chronology argument thus serves only to confirm the implausibility of his interpretation. When Congress in 1996 explicitly made Social Security benefits subject to offset, Congress was necessarily aware that Section 1091a(a) already had rendered the Secretary exempt from the Debt Collection Act's ten-year limitation period. See *Goodyear Atomic Corp*, *supra*. The Debt Collection Act's ten-year time limit pre-dated Section 1091a(a)'s abrogation of statutes of limitations, and Congress therefore must have intended that the Department of Education would not be bound by the preexisting ten-year limit in conducting any administrative offsets to collect student loan debt.

2. Petitioner also errs in suggesting (Pet. Br. 15, 23) that application of the plain terms of Section 1091a(a) violates the canon that amendments to statutes must be read in light of the original enactment that remains unchanged. The ten-year limit under Section 3716(e)(1), of course, generally applies to Social Security offsets used to collect most types of debts, just as the ten-year limit generally applies to offsets of other types of federal payments subject to offset under the program. But nothing in the 1996 amendments to the Debt Collection Act expressly repealed Section 1091a(a) as it relates to the Department of Education's collection of student loan debt.

Nor is there any basis for concluding that the 1996 amendment worked an implied repeal of Section 1091a(a). Petitioner's argument violates "the cardinal rule * * * that repeals by implication are not favored."

Cook County v. *United States ex rel. Chandler*, 538 U.S. 119, 132 (2003) (internal quotation marks omitted). Petitioner points to no evidence that Congress, in enacting the 1996 amendment, considered and intended to override the plain language of Section 1091a(a) and its "notwithstanding any other [law]" clause. Petitioner thus cannot supply "the overwhelming evidence needed to establish repeal by implication," *J.E.M. AG Supply, Inc.* v. *Pioneer Hi-Bred Int'l*, 534 U.S. 124, 137 (2001).

Moreover, adoption of petitioner's contention, *i.e.*, that Section 1091a(a)(1) applies only to pre-existing legislation and therefore has no force with respect to the subsequently enacted new Section 3716(e)(1), would nullify Section 1091a(a) in its entirety with respect to *all* administrative offsets under the Treasury Offset Program, not just Social Security offsets. Petitioner freely admits as much; he asserts that "Congress meant the 10-year bar to apply to *all* offsets." Pet. Br. 15. Such a result would bring about a radical change in the Department's collection of student loan debt and would prevent the government from collecting the approximately $5.7 billion in student loan debt that has been outstanding longer than ten years. See p. 28, *infra*.

The 1996 amendments to the Debt Collection Act, which were passed to "maximize collections of delinquent debts owed to the Government," H. R. Conf. Rep. No. 537, 104th Cong., 2d Sess. 370, cannot be read to limit the plain terms of Section 1091a(a) or to defeat the manifest purpose of Congress to permit the Secretary to collect defaulted student loan debt by all available means without regard to any limitation periods. As petitioner observes (Pet. Br. 9, 21), Congress in enacting the Debt Collection Improvement Act "carefully reviewed and overhauled the Debt Collection Act." That observa-

tion merely underscores that, if Congress had intended to reimpose the ten-year statute of limitations upon the Department of Education, it would have done so explicitly.

C. Section 207 Of the Social Security Act Does Not Foreclose Social Security Offsets For Student Loan Debt Outstanding For Over Ten Years

1. Petitioner also relies on Section 207 of the Social Security Act, 42 U.S.C. 407. Pet. Br. 15, 17-18. Under that provision, no Social Security benefits "shall be subject to execution, levy, attachment, garnishment, or other legal process," and "[no] other provision of law * * * may be construed to limit, supersede, or otherwise modify [Section 207] except to the extent that it does so by express reference to this section." 42 U.S.C. 407(a) and (b). As discussed, however, the Debt Collection Act itself contains an express reference to Section 207, by explicitly providing that Social Security benefits are *subject to offset* notwithstanding Section 207 of the Social Security Act. See 31 U.S.C. 3716(c)(3)(A)(i) ("Notwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act * * *) all payments due to an individual under * * * the Social Security Act * * * shall be subject to offset under this section."). As the court of appeals correctly concluded, that provision "explicitly removes any protection under [Section 207] that Social Security benefits may have had from offset, and thus allows the government to reach [petitioner's] benefit in order to collect on his debt." Pet. App. 6a.[4]

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[4] The court below discussed, but did not decide, the issue whether the Treasury Offset Program is a form of "legal process" within the meaning of Section 207. Pet. App. 4a-5a. This Court held in *Washing-*

No additional reference to Section 207 is required in Section 1091a(a) before that provision can be applied according to its unambiguous text. Section 1091a(a) merely abrogates otherwise applicable statutes of limitations and is not the provision that authorizes administrative offset. That authorization is instead provided by the Debt Collection Act. 31 U.S.C. 3716(a) ("After trying to collect a claim from a person under section 3711(a) of this title, the head of an executive, judicial, or legislative agency *may collect the claim by administrative offset*.") (emphasis added); 31 U.S.C. 3716(c)(3)(A)(i) ("[A]ll payments due to an individual under * * * the Social Security Act * * * *shall be subject to offset under this section*.") (emphasis added). Thus, the Debt Collection Act makes clear that, notwithstanding Section 207, Social Security benefits are subject to offset to satisfy a claim by the federal government. *Ibid.* There is no further requirement that modifications to the limitation period otherwise applicable to expressly authorized offsets themselves include an additional cross-reference to Section 207.

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ton State Department of Social & Health Services v. *Keffeler*, 537 U.S. 371 (2003), that Section 207 requires, at a minimum, "utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability." *Id.* at 385 (emphases added). The Treasury Offset Program contains a variety of procedural guarantees to debtors, 31 U.S.C. 3716(a), and, for debts owed to the United States, operates to withhold money in the possession of the Department of the Treasury due to an individual to offset a debt to the United States. 31 U.S.C. 3701(a)(1). In any event, because the Debt Collection Act contains an express reference to Section 207, this Court need not decide whether Social Security offsets to repay a debt to the United States are a form of "legal process."

2. Petitioner also errs in relying on an un-enacted amendment to Section 3716(e) that was proposed by the government in September 2004 and would have provided that, notwithstanding Section 207 of the Social Security Act, no time limitation would apply to any administrative offsets under the Debt Collection Act. Pet. Br. 10-11, 20 (citing H.R. 5025, 108th Cong., 2d Sess. § 642 (2004); S. 2806, 108th Cong., 2d Sess. § 642 (2004)). That Congress in 2004 did not enact that legislative proposal reveals nothing whatsoever about the intent of earlier Congresses in passing the relevant enactments in this case, a point petitioner correctly concedes (Br. 20). See, *e.g.*, *United States* v. *Craft*, 535 U.S. 274, 287 (2002) ("[F]ailed legislative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'") (quoting *Pension Benefit Guar. Corp.* v. *LTV Corp.*, 496 U.S. 633, 650 (1990)); accord *Central Bank of Denver, N.A.* v. *First Interstate Bank*, 511 U.S. 164, 187 (1994).

In any event, that un-enacted bill does not, as asserted by petitioner (Br. 20), even support an inference that Congress in 2004 was opposed to the use of administrative offset of Social Security benefits to collect delinquent student loans after more than ten years. Rather, the bill would have removed the ten-year limit for administrative offset with respect to the collection of *all* debt owed to *all* federal agencies, and with respect to *all* federal payments subject to offset, not just Social Security payments. Even assuming *arguendo* that any meaningful inference could be drawn from mere legislative inaction, Congress's failure to enact that more sweeping regime in no way suggests that the 2004 Congress would have disagreed with Section 1091a(a)'s express abrogation of statutes of limitations with respect

to delinquent *student loans* "[n]otwithstanding any other provision of [law]." 20 U.S.C. 1091a(a)(2).

Similarly, the government's inclusion of an express reference to Section 207 in an un-enacted bill does not demonstrate that an express reference to Section 207 is required to override the Debt Collection Act's ten-year limit. The reference to Section 207 in the government's proposed bill would have served the purpose of overruling some lower court decisions which had held that Section 207's express reference requirement precluded the Department from collecting delinquent student loan debt by Social Security offsets. See *Lee* v. *Paige*, 276 F. Supp. 2d 980 (W.D. Mo. 2003), aff'd, 376 F.3d 1179 (8th Cir. 2004), petition for cert. pending, No. 04-1139 (filed Feb. 25, 2005); *Guillermety* v. *Secretary of Educ.*, 241 F. Supp. 2d 727 (E.D. Mich. 2002).

Moreover, a current bill is pending before Congress that would similarly eliminate the ten-year limit for any administrative offset but would do so without any express reference to Section 207. That bill would amend Section 3716(e) to read that "[t]his section * * * applies to a claim under this subchapter regardless of the period it has been outstanding." H.R. 1427, 109th Cong., 1st Sess. (2005). Surely such a provision, if enacted, would not be void because it fails to reference Section 207. Indeed, Congress could eliminate the ten-year limit simply by repealing Section 3716(e)(1) altogether without having to make a express reference to Section 207. The same conclusion is true of Section 1091a(a), because, as stated, that provision unambiguously overrides the ten-year limit for the collection of student loan debt.

D. A Ten-Year Limit On Social Security Offsets Would Impair The Department of Education's Ability To Collect Seriously Delinquent Student Loans

1. The Department of Education's statutory exemption from all statutes of limitations under Section 1091a(a) is essential to the agency's ability to combat the unique challenges posed by collection of delinquent student loan debt. As discussed *supra*, p. 4, the Department of Education generally finances student loans for any individual who wishes to attend an institution of higher education without regard to the credit worthiness of the individual. The government is thereby able to maximize educational opportunities, but it also takes a substantial risk that individual borrowers will fail to fulfill their financial obligations. Indeed, over $33 billion of delinquent student loan debt is outstanding. *Fiscal Year 2004 Report*, *supra*, at 6. Student loan defaults thus impose a significant burden on the federal treasury. See, *e.g.*, S. Rep. No. 204, 102d Cong., 1st Sess. 4-5 (1991); H.R. Rep. No. 595, 95th Cong., 1st Sess. 537 (1977) (statement of Rep. Ertel).

The abrogation of all statutes of limitations in Section 1091a(a) for all forms of student loan collection efforts, including Social Security offsets, protects the public fisc and helps to ensure the viability of the student loan program. An unlimited time period in which to collect delinquent debt allows the Department of Education to recoup a greater portion of the vast sums owed to the United States by delinquent student loan borrowers. Such a time period also encourages borrowers to repay their obligations in the first place, by eliminating any incentive to evade student loan obligations for a number of years on the expectation that the time period during which the Department of Education may recover stu-

dent loan debt will expire. Section 1091a(a) thus works in tandem with the liberal lending policy of the federal student loan program. Educational loans are freely given, but the obligation to repay the loans does not expire with the passage of time.

2. A bar on administrative offset of Social Security benefits for delinquent student loans that are more than ten years old would significantly undermine the government's collection efforts. Social Security offsets are often the last remaining collection tool available to the government in such cases. The Department of Education resorts to administrative offset only after the lender, the guarantee agency, and the Department itself have given a debtor multiple opportunities to repay his debt by other means, but the debtor has evaded all such collection efforts—typically for many years or even decades.

The vast majority of recipients of federal student loans receive such financial assistance under the Higher Education Act when they are young adults. Many such student loan debtors will not begin to receive Social Security benefits until they reach retirement age, which may occur many years after the Department of Education is first entitled to collect on defaulted student loan debts. The Department advises us that, as of August 2005, the Secretary had certified to the Department of the Treasury approximately $7.4 billion in delinquent student loan debt, and that approximately $5.7 billion reflected student loan debt over ten years old. For individuals having student loan debt who do not receive Social Security benefits until ten years after the Secretary is entitled to collect on the loans, a ten-year limitation period would deprive the Department of Education of the most efficient (and, in many instances, the only)

means of collecting delinquent debt to the United States.[5]

For instance, application of a ten-year statute of limitations for Social Security offsets would render the offset program a nullity with respect to debtors who default on GSL loans before the debtor turns 55 but who do not receive Social Security retirement benefits until they reach full retirement age, which ranges from age 65 to age 67. Http://www.ssa.gov/retirechartred.htm; see also Pet. Br. 11 ("Following his sixty-fifth birthday in July 2003, Mr. Lockhart's period of disability ended, and he began receiving old-age benefits."). When the debtor defaults on a GSL, the lender invokes the loan guaranty and is paid by the guarantor. In turn, the guaranty agency (typically within 45 days of paying the lender) seeks reinsurance from the Department of Education. As soon as the Department of Education pays the reinsurance, the Department becomes entitled to collect on the loan by administrative offset. 31 U.S.C. 3716(c)(6); 34 C.F.R. 682.410(b)(6)(ii). Accordingly, for debtors who default before age 55, the debt generally will have been outstanding for more than ten years before the government is able to recover the debt through offset of Social Security retirement benefits. Not surprisingly, that category represents the vast majority of student loan borrowers who default. The Department of Education advises that approximately 90% of all debts for which it paid reinsurance claims during Fiscal Years 2002-2004

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[5] Approximately an additional $26 billion in outstanding delinquent student loan has not yet been certified to the Department of the Treasury for administrative offset, generally because either the debtor has entered into an agreement to repay the debt, 31 U.S.C. 3716(a)(4), or the debtor is in bankruptcy and an automatic stay is in effect, 11 U.S.C. 362.

were owed by a debtor whose age was under 55. A lengthy collection period is therefore critical to ensure that Social Security offsets remain an effective collection tool.

3. Application of a ten-year limitation period would also harm the Department of Education's collection efforts with respect to individuals, such as petitioner, who begin receiving Social Security disability benefits before reaching retirement age. The Debt Collection Act and implementing regulations strictly limit the amount of Social Security benefits that are subject to offset. 31 U.S.C. 3716(c)(3)(A)(ii); 31 C.F.R. 285.4(e). It therefore could take well beyond ten years to collect many delinquent student loan obligations through the offset mechanism. For example, in the case of petitioner, even after three years of offsets, the Department has been able to collect only approximately $90-140 per month—for a total of approximately $4000—whereas petitioner's outstanding debt currently exceeds $75,000. The amount of the offset reflects a judgment that the offset should still leave the recipient with substantial benefits in many situations, including petitioner's. See p. 31, *infra*. A lengthy collection period therefore serves Congress's overriding goal in passing Section 1091a(a) to maximize the collection of delinquent student loans, while allowing the offsets to be extended over many years to ensure that significant benefits are still received.

E. Adequate Safeguards Protect Social Security Beneficiaries

Application of Section 1091a(a) according to its plain terms does not unduly deprive individuals of their Social Security benefits. As discussed, offsets typically occur only because the debtor has evaded all other attempts at

collection. Moreover, the Debt Collection Act contains a number of "safeguards" to protect individuals whose benefits may be the "sole or major source of income for the debtor." 142 Cong. Rec. 9082 (1996). As discussed, the statute and governing regulations impose significant caps on the amount of Social Security offsets that can occur. See p. 8, *supra*. Thus, the Department of the Treasury advises that when the government began withholding a portion of petitioner's Social Security benefits, it withheld $93 per month, out of $874 per month that petitioner was receiving in Social Security benefits.

The Debt Collection Act also requires the Department to provide debtors with adequate notice of the claim, an opportunity to inspect and copy the agency's records with respect to the claim, an opportunity for review within the agency with respect to the claim, and an opportunity to enter into a written agreement to settle the claim. 31 U.S.C. 3716(a)(1)-(4); see also 20 U.S.C. 1078-6(a)(1)(A) (requiring Department to offer defaulters the opportunity to repay loans under "reasonable and affordable" installment terms "based upon the borrower's total financial circumstances"); 20 U.S.C. 1078(m) (providing for refinancing of loans under "income contingent" repayment terms). There is no dispute in this case that petitioner has defaulted on his loan obligations; that he was given adequate procedures before offsets began; and that he was given the opportunity to repay his debt.

Moreover, the Department of Education's regulations permit administrative discharge upon a showing of "total and permanent disability." 34 C.F.R. 682.402(c) (GSL program), 685.212(b) (Direct Loans), 674.61(b) (Perkins Loans). Under the regulations, an individual is totally and permanently disabled if he "is unable to work

and earn money because of an injury or illness that is expected to continue indefinitely or result in death." 34 C.F.R. 682.200. Accordingly, the Department of Education has reasonably determined that, absent a showing that the individual will not be able to earn income because of his medical condition, the individual is expected to repay his debt to the student loan program. 65 Fed. Reg. 65,683 (2000). The Department of Education's records do not reflect that petitioner has ever sought to avail himself of the agency's regulations to discharge his debt on account of a disability. See also Pet. C.A. Br. App. R-1 (offset notice to petitioner in which he left blank a space to object to offset on grounds of a disability but in which he objected to offset on other grounds).

Finally, petitioner errs in suggesting that offsets of his benefits would violate the "safeguards" mentioned by the conferees in amending the Debt Collection Act to make Social Security benefits subject to offset. Pet. Br. 10. The only safeguards mentioned by the conferees were "*regulatory* safeguards" to limit the amount of benefits even further than the $9000 statutory annual exemption and to consider exemptions for exceptional hardships. 142 Cong. Rec. 9719 (1996) (emphasis added); *id.* at 9082 (emphasis added). Nothing in the conference report refers to the ten-year period, much less suggests that is one of the contemplated "safeguard[s]." And nothing in the legislative history of the 1996 amendments to the Debt Collection Act suggests that Congress did not intend the plain terms of the Higher Education Act to apply when Social Security benefits are offset in order to collect delinquent student loans.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. Section 1091a, of Title 20, U.S.C., provides, in relevant part:

> **§ 1091a. Statute of Limitations, and State court judgments**
>
> **(a) In general**
>
> (1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.
>
> (2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of the amount due from a borrower on a loan made under [Title IV of the Higher Education Act.]

2. Section 3716 of Title 31, U.S.C., provides in relevant part:

> **§ 3716. Administrative offset**
>
> (a) After trying to collect a claim from a person under section 3711(a) of this title, the head of an executive, judicial, or legislative agency may collect the claim by administrative offset. The head of the

agency may collect by administrative offset only after giving the debtor—

(1) 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, and an explanation of the rights of the debtor under this section;

(2) an opportunity to inspect and copy the records of the agency related to the claim;

(3) an opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

* * * * *

(c)(3)(A)(i) Notwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act (42 U.S.C. 407 * * *), except as provided in clause (ii), all payments due to an individual under * * * the Social Security Act * * * shall be subject to offset under this section.

(ii) An amount of $9,000 which a debtor may receive under Federal benefit programs cited under clause (i) within a 12-month period shall be exempt from offset under this subsection. * * *

* * * * *

(e) This section does not apply—

(1) to a claim under this subchapter that has been outstanding for more than 10 years; or

(2) when a statute explicitly prohibits using administrative offset or setoff to collect the claim or type of claim involved.

3. Section 407 of Title 42, U.S.C., provides in relevant part:

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

* * * * *