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Offset: How the government improperly takes money from the disabled

By Carmen Reinicke

In December of 2009, Linda Carrasquillo was due to get a cost of living increase in Social Security disability payments.

She had been receiving \$750 a month since 2007, when she began getting disability benefits after a back injury kept her from working. She previously had a job cleaning seats and floors of buses in New York City.

The money was much less than what she was used to living on. Before her disability, she was making about \$25,000 a year. After she was on disability, her benefits amounted to \$9,000 each year -- about \$1,000 below the 2009 federal poverty line.

She was supposed to start receiving extra money -- \$785 each month -- but never got the modest increase.

This was because of an old student loan. In 2001, Ms. Carrasquillo signed for \$4,000 in Parent Plus loans so that her daughter, who had taken out the maximum in federal loans, could finish her senior year of college in San Antonio, Texas.

Under federal rules, Carrasquillo should have received her full benefit, not a reduced one. But the Social Security Administration database did not show that Carrasquillo had been disabled for more than five years -- the trigger point when the disabled relying on public assistance are no longer supposed to see their checks reduced for old student loans.

She is far from alone. The US Department of Education is supposed to use its computers to match its borrowers who now suffer from total permanent disabilities based on Social Security or Veteran Administration rolls. If the borrower has been disabled for more than five consecutive years, then deductions for unpaid student loans are supposed to cease.

A report from the U.S. Government Accountability Office, a federal agency that reviews government work, shows that the program, now a computerized system that matches Social Security numbers, fails to identify thousands of individuals who deserve student debt relief.

"The process is so incredibly complicated that most people are going to find it challenging to qualify for loan forgiveness," said Mark Kantrowitz, a student loan expert

Carrasquillo didn't realize when she signed the paperwork for the daughter that the loan was in her name -- she thought by co-signing she helping her daughter but would not be making the payments, she said in an interview. Carrasquillo only has an eighth-grade education herself, and taught her children that education was of the utmost importance.

Carrasquillo takes responsibility for the loan. "At the end of the day, she's my daughter and she needed to graduate," she said.

Today, nearly two decades after her daughter graduated, neither Carrasquillo or her daughter have paid off the Parent Plus loan. Her daughter now has two children and runs a small business with her husband, and both work hard to pay their student loans, Carrasquillo said.

When Carrasquillo realized that she was the holder of the loan – not a co-signer - She struggled with repayment. Through a combination of payments as well as forbearances and deferments, programs that pause payments, Carrasquillo managed to keep the loan in good standing from 2002 to 2005. But when she hurt herself and could no longer work, she fell behind and defaulted on the loan in 2008.

The Department of Education is not allowed to deduct from Social Security payments if they are less than \$750 each month. Over time, however, the number of Americans who receive less than \$750 a month in disability payments has shrunk; when the rule was instituted in 2004, 42 percent of those receiving benefits were getting less than \$750 each month. A decade later, the number fell to 19 percent.

Each time that Carrasquillo's monthly check has increased due to cost of living, the U.S. Treasury Department took out more, leaving her with less to live on as costs rose.

In 2012, the Social Security Administration sent an electronic notice to the Treasury Department that said Carrasquillo was due a payment.

The Social Security Administration and Treasury are supposed to use their computers to match with the Department of Education people who have loans and are getting disability. If the borrower has been disabled for more than five consecutive years, the garnishments for the student loans are supposed to cease.

To make matters worse, Carrasquillo's kidneys diminished in 2012 and required tri-weekly dialysis treatments. For the next few years, the amount taken from her disability checks increased to \$77, \$89 and then \$103 a month by 2015. Each increase left Carrasquillo with \$750 a month to live on, even as the costs of living rose.

She also continued to receive letters from the Treasury that said that she would continue to see money disappear from her disability checks each month. What the letters did not say is that Carrasquillo did not need to pay the loan at all.

Shedding unpaid student loans is among the most difficult debts to erase without payment. Student loan debts, for instance, cannot easily be reduced even for those who seek bankruptcy court protection.

But under a federal program established in the early 1990s as part of the Higher Education Act, federal student loans are allowed to be forgiven for those who are totally and permanently disabled.

In October 2016, Carrasquillo received a kidney transplant. That year, she was also sued for eviction by her landlord in Woodhaven, Queens because she struggled to keep up with rent.

A paralegal who helped fend off her eviction proceedings told her she might be eligible for total and permanent disability discharge in August of 2017 and helped her file an application for the program right away. Her benefits continued to be garnished until Brooklyn Legal Services stepped in to help.

Since 2010, Carrasquillo has seen \$6,000 disappear from her monthly disability checks. This money could have greatly helped her as she was dealing with her end-stage renal failure.

The federal program for those disabled with student debts is supposed to help those who are unlikely to repay their debts, or repayment would cause significant financial hardship. Borrowers who have a permanent disability are supposed to be notified that they can apply for loan forgiveness.

A 2016 report from the Government Accountability Office shows that the program, a computerized system that matches Social Security numbers, is failing thousands of other people across the United States by not identifying or fully notifying those who deserve relief.

In addition, the federal government has a cumbersome process that requires those who have loans discharged must document their income for three years afterwards.

“The failure of the US Department of Education to do data match with Social Security and the VA concerning TPD – I called it morally bankrupt at the time,” said Mark Kantrowitz, a student loan expert. Now, however, he said that the process is so complicated that most people would find it challenging.

With the help of Brooklyn Legal Services, Carrasquillo and eight other plaintiffs sued the Department of Education, the Department of Treasury, the Social Security Administration and the Attorney General for the mishandling of their cases.

“It’s kind of perverse, really,” said Johnson Tyler, the lawyer from Brooklyn Legal Services who represented the case.

Government response

The Department of Justice declined to comment on the case. The Social Security Administration referred questions to the Department of Education.

A spokesman for the Department of Education said the agency works with the Treasury Department “to ensure the program is managed correctly and that borrowers are afforded their right to due process before offset is initiated.”

“The Department is not aware of any mistakes,” the spokesman said. “However, if a borrower believes the Department has wrongly requested offset of Social Security benefits, the borrower should contact the Department’s Default Resolution Group.”

In court documents, the Department of Education denied wrongdoing for the majority of the accusations. The Department of Education conceded that it had paperwork from the plaintiffs showing their disability status and that the Department is supposed to forgive loans of those who are totally and permanently disabled.

In addition, the department has seen an increase in applications for disability student debt relief since the matching process was updated and streamlined in April 2016, the spokesman said.

The Department of Education is working with the plaintiffs to settle out of court. While they hoped to be finished by November 21, 2018, Tyler said in an interview that they were granted an extension and are still negotiating. The plaintiffs originally sought \$20 million in damages.

The GAO Report

In a December 2016 report, the U.S. Government Accountability Office found that since the matching program between the Social Security Administration and the Department of Education officially began, several hundred thousand Americans appeared eligible to erase student debt because of disabilities -- but most had not even applied for the break.

In April 2016, the Department of Education had initially identified about 387,000 borrowers eligible for discharge through the matching system.

Of those, 100,000 were in default of student loans and had been certified for not needing to repay the money. Applications for total and permanent disability discharge were sent to about 234,000 by the end of July 2016.

Of those, 19,000 applications – about 8 percent – had been approved. About 1,800 had been submitted but were not approved due to missing information, such as signatures.

A remaining 213,000 borrowers who were sent forms had not yet applied.

Using data from the Treasury, Social Security Administration and the Department of Education, the GAO found that 32,000 of those who had not applied were over 50 years old when Treasury started deducting student loan payments from their Social Security checks even though they

had a disability that was not expected to improve – meaning that they were likely eligible for total and permanent disability discharge.

Following this report, in April 2016 the Department of Education said that it would stop taking money from borrowers who were shown through the matching process with Social Security Administration to have a disability that had lasted for more than five consecutive years, like Carrasquillo. It also updated and streamlined the matching process between Social Security Administration and Department of Education and Treasury to stop taking payments from those with “Medical Improvement Not Expected” designations.

But that didn’t help Carrasquillo because the Social Security Administration did not include the correct exemption on her file.

It also didn’t help Claudia Cort.

Around October 2016, Cort was due to get her first Social Security Disability payment. Cort, then 50, became physically disabled after a bad car accident in 2007 when she suffered multiple broken bones. After the accident, she lost her job working for the city of New York and defaulted on about \$4,000 of student loan debt. She had borrowed \$11,625 to attend the College of New Rochelle, where she graduated with a B.A. in psychology.

Before she could no longer work due to her disability, Cort had repaid \$7,707 of the \$11,625 she had borrowed.

When she started getting Social Security benefits, the Administration acknowledged that she had been disabled since January 1, 2011. In addition, her next medical review was scheduled for September 2018, more than 5 years in the future. This should’ve meant that her disability was severe enough that Treasury would not take money from her disability checks each month.

But it did not.

In December 2016, Cort noticed that her \$1,617 monthly Social Security Disability check had been reduced by \$242.55.

She was also unaware at first that she was eligible for a disability discharge. When she saw that money was being taken out of her disability check, Cort took it upon herself to fix the problem. She called the Treasury Department and learned the offset was for her outstanding student loan debt. At a doctor’s appointment, she overheard someone say that student loans could be forgiven if a person had a disability, so she researched how to apply on the internet.

In January of 2017, Cort filed a disability discharge application with documentation she had that showed she was entitled to disability benefits. Her next medical review on her disability was in September 2018. Nelnet, the Department of Education’s agent said that garnishments would continue until a decision was made.

This made Cort's budget very tight. Her annual income from disability benefits went from \$19,404 to \$16,500. While still over the poverty line, which is about \$12,000 for a single person in 2017, after paying her rent, she had only \$374 left each month for food and other expenses. She stopped going to the doctor because she could not afford the copay at each visit.

In March of that year, Cort's application was denied.

That is when she sought Brooklyn Legal Services aid to reapply. On May 18, 2017, Cort's application was approved and deemed effective April 6, 2017.

The more than \$1,400 that Treasury took from her disability checks since December 2016 would not be returned.

How the Department of Education and Social Security Administration currently match borrowers

It took years for the federal government to implement the current system of matching between the Department of Education and Social Security Administration.

Years ago, Kantrowitz was one of many who argued for the agencies to start a matching program. While the current program is a step in the right direction, it is still leaving some of the most vulnerable borrowers falling through the cracks.

"The one problem with this process with both the Social Security and the VA is that the borrower still has to apply for the discharge. They're interpreting the law as the borrower still has to apply," said Kantrowitz.

"The challenge is that some borrowers are getting these letters and it sounds too good to be true so they won't send it in. It is distressing that there are some people that qualify for this but they are too scared to apply for it because they think it might be a scam."

The GAO report also found that the information given to borrowers by the Department of Education in notification letters and on their website was unclear.

"If you're a person that's totally and permanently disabled could you follow these directions?" said Allison Bawden, a director at the U.S Government Accountability Office.

The readability and language on the form is an issue. An analysis showed the form is difficult to read and would require a 12th grade education to understand. Some parts would require a college education to understand.

Failure to update the program has left more borrowers – both senior citizens collecting Social Security and those collecting Social Security disability – exposed to having money deducted from their disability checks.

In addition, the money that Treasury takes from monthly Social Security and disability checks usually does not go towards the principal of the outstanding loan, meaning that borrowers do not see their balances go down, and may not ever pay the debt in full. Instead, the GAO found that almost 75 percent of the money taken from Social Security and disability checks went to cover fees from the Treasury Offset Program or interest collecting on their loan balance.

While nearly one third was able to either pay off their loans or discharge them through the total and permanent disability discharge program, some borrowers saw their balances increase even as money was still being taken from their Social Security or disability checks each month.

Social Security benefits were designed to help prevent poverty among the elderly and disabled. The impact of having Social Security payments diminished can be severe.

One plaintiff in Brooklyn Legal Services case, Hector Rodriguez, dealt with declining health and had a heart attack stemming from the stress this case – he now lives with his family in Puerto Rico.

Rodriguez, a 62-year-old Vietnam veteran, panicked when he opened a letter from the Department of Justice in early 2014 telling him his Social Security benefits were going to be cut.

The reason: an old student loan. In 1978, Rodriguez took out a \$1,000 federal loan to cover tuition at Kingsborough Community college in New York. But now, all these years later, he was fully disabled, diagnosed with schizophrenia. He had been surviving on Social Security Disability and Veterans Affairs Disability checks as his only income.

At the time the case was filed, Rodriguez lived in Starrett City, Brooklyn, a housing development in the East New York neighborhood. He was distraught at the thought of losing 15 percent of his income and knew that with a decrease he would not be able to afford his basic expenses such as rent, utilities and food. Seeking help, Rodriguez asked a Veterans Administration social worker what to do. The social worker advised him to call the Justice Department's debt collector, Mullen & Iannarone, which told him he needed to pay \$100 a month from his meager income.

What no one told him was that he did not need to repay the student loan. Federal rules for student loans are supposed to be erased for those with total and permanent disabilities, including military veterans.

Rodriguez fit the bill – in 2011, he had been granted a Social Security review period of five to seven years, meaning he was considered totally and permanently disabled and could have his

loans discharged. But he didn't know about the student loan discharge program, or the level of his disability status.

Rodriguez did not know that he qualified for having his loan erased and did not enter a repayment plan with the Department of Justice. In March 2014, Treasury took \$177 from his monthly Social Security disability payment of \$1,184. Then he entered the payment plan where he would lose \$100 a month – still a loss, but more livable for his circumstances.

About one year and more than \$1,300 later, Rodriguez learned he did not need to pay anything for his old student loans. Brooklyn Legal Services said he could seek a disability discharge.

Still, the application process was a struggle for Rodriguez. His mental illness made it difficult for him to complete the paperwork necessary. In addition, his first application was rejected because his Social Security number was miscopied in one instance on the form. This meant he had to reapply, and that his discharge was not granted until April 22, 2015.

The financial strain is one reason he has since left New York and now lives with family in Puerto Rico.

Carrasquillo, meanwhile, was nearly evicted. Today, she supports herself and three grandchildren - from another child, not the daughter who she helped pay for college - on her Social Security Disability benefits. It's almost never enough to go around, she says. Still, all she wants from the settlement of the case is to help others, she said.

"Whatever help I get, fine," she told me. "But there's a lot of people like me out there, and it's just not right."

Other plaintiffs experienced hardship as well and struggled to pay for rent, food, utilities bills and medical care. More than one went without medical treatment because they could not afford it due to the money being taken from them out of their benefits each month.

Worried to death

Persis Yu, a lawyer with the National Consumer Law Commission, said she had a client who died after battling with Social Security Administration and the Department of Education for seven years. She believes the stress of the fight contributed to her demise. Her client's death was tragically timed – she died only three months after her loans were finally discharged.

The program where student loan payments are deducted from Social Security checks is called an offset.

The GAO report found that over 10 percent of those having their benefits offset died with loans still outstanding.

Monitoring for Three Years

Another roadblock for the disabled is a 3-year monitoring period for those newly designated as disabled, experts say.

Even after borrowers have applied for relief from needing to pay student loans, and have been approved for their loan balance go to zero, they have to prove that their income is below the Federal Poverty Line for a family of two in the area where they live. They need to do this for three years. If borrowers do not keep up with the paperwork, their loans can be reinstated and their benefits could be garnished again.

“I do think it’s probably the most problematic part of the discharge program,” said Adam Minsky, a lawyer in Boston who works with student loan debt.

The only people who do not have this monitoring period are military veterans with a total and permanent disability rating by Veterans Affairs.

Everyone else, regardless of the duration or scope of their disability, is required to prove income. For those that file a tax return, the process is relatively simple and can be done online, Minsky said. But for those who are poorer and do not file tax returns, it is more complicated - they have to mail in a form.

The GAO found that student loan payments were reinstated for about one fifth of borrowers who are 50 and older from July 2008 through September 2012. In 2015, 61,536 borrowers that were initially approved for disability discharge had loans reinstated during the 3-year monitoring period. The student loan debt was valued at \$1.2 billion.

It's often difficult for disabled individuals to file the necessary paperwork to update the Department of Education and the IRS that they still live below the poverty line, according to experts.

This also poses problems for some borrowers with families. If you have a family larger than two people, you are held to the poverty line for two people -- a borrower with a family of four still cannot make more than the poverty line for two people.

In 2018, the Federal Poverty Line for a family of four was \$25,100. It's \$16,460 for a family of two.

Matt

The impact of this monitoring affects not just the elderly – disabled people of all ages are impacted.

Matt, who has asked that his last name be withheld to protect his identity as he and his partner have received death threats due to his legal work, is one of those individuals.

Matt grew up in Massachusetts, and was the first member of his family to attend college. In his senior year, Matt became violently ill. After rounds of doctors' visits and tests, he was diagnosed with a rare form of Crohn's disease that sometimes makes him so ill that he is unable to eat and has to be on intravenous food in a hospital for months.

Matt went on to study law and public health before he became too ill to consistently work – he still takes some legal cases, but is unable to work a normal job due to his illness, which can take him out of commission for weeks at a time.

He started pursuing total and permanent disability discharge in 2011 as his condition worsened. Because he has a law degree, he was able to navigate the system on his own. But even with his training, it was a difficult process.

"When I submitted by own application, which was perfect, it was kicked back to me at every level," Matt said in an interview. "We should be having a process that allows people to avail themselves of the discharge process that's in law but that process is so adversarial that people can't navigate it without a lawyer."

After he was granted total and permanent disability discharge, he had problems during the 3-year conditional monitoring period because his health again took a turn for the worse. While hospitalized, it was difficult to continuously file the paperwork necessary to prove that he was not making more than the federal poverty line, a requirement of the monitoring period. He received a threatening letter saying that his more than \$200,000 of loans could be reinstated.

He called the process "It's a giant pain in the ass," Matt said it did not make sense to prove his disability for an extra three years since he is suffering from a disease not expected to improve in the next years.

He was able to sort out the paperwork. But after proving he had a disease for over five years that was not going to improve, the monitoring period felt like another hoop to jump through.

"It's this additional time in the penalty box," Matt said. "All of this is motivated by this fear that disabled folks are scamming the system, that we are not actually disabled."

Boston attorney Minsky would like to see automatic renewal for those in the three-year monitoring period.

"I don't see why the Department of Ed can't talk with the IRS," he said. "To me it seems like an easy fix."

For those who don't file a tax return, Minsky says a simple form would suffice. "That should really be all it is," he said, "Now you have to complete this convoluted 30-question choose your own adventure."

To Be Sure

To be sure, the federal government has improved the application process for total and permanent disability discharge, and some individuals are able to successfully apply and quickly see their student loans discharged.

In addition, the updated database matching program between the Social Security Administration and the Department of Education has helped by sending a notification to those with disabilities, encouraging them to apply for relief..

Minsky said that he has had clients apply and be approved for total and permanent disability discharge in a matter of months.

"To be perfectly candid, the disability discharge is one of the better run [government] systems," Minsky said. "There are still problems but overall the system has improved in the last three years."

Christie Arkovich, a lawyer in Florida has had similar success with clients applying for total and permanent disability discharge.

Recommendations for improvements

The GAO recommended that the Department of Education update multiple parts of the process, starting with the total and permanent disability discharge applications. The GAO suggested that the forms clearly and prominently state that failure to provide annual proof of income during the 3 - year monitoring period following discharge would result in loans being reinstated.

The Department of Education said that the form has the recommended language, but to make it clearer they would use a larger font size and 'plain language' on an updated version of the form. A revised form was approved by the Office of Management and Budget on September 20, 2016 but the Department of Education said shortly after that it would not be used for a number of months.

In addition, the new form still does not clearly state that borrowers can have loans reinstated if they do not provide the proper proof of income during the 3-year monitoring period.

The GAO made several other recommendations to the Department of Education in their report. Most have not been acted on by the Department of Education.

The GAO said the Secretary of Education should notify borrowers of the consequences of not applying for total and permanent disability discharge from needing to repay student loans.

If a borrower may be eligible but does not apply for disability discharge, interest will continue to build up on their outstanding loan balance.

Even if they are not seeing deductions from disability checks, they could start to have money taken out of their Social Security benefits when they switch over to retirement benefits.

The Department of Education responded that it plans to notify borrowers of these consequences but does not currently have the budget to do so.

The GAO also wanted the Department of Education to look into automating how it verifies income. This would largely mean that borrowers who have had loans discharged, and file a tax return, would not have to file additional paperwork.

That would greatly help disabled individuals for whom filing out this paperwork is difficult, according to the GAO, and lessen the number of people who have loans reinstated during the three-year monitoring period.

The Department of Education said that they are working with the Social Security Administration to determine if an automatic income verification process is possible, and would have added benefits.

The GAO recommended that applications for payment relief be available online. The department said it would change the website.

Experts say that there are clear and simple fixes that the Department of Education could make to further improve the process of disability discharge, especially for individuals collecting Social Security benefits.

“I certainly think the matching program is better than nothing,” said Persis Yu, a lawyer for the National Consumer Law Commission. “The bottom line is that if they have information about borrowers who are currently eligible to have loans forgiven, they shouldn’t be collecting those loans.”

Given the number of those eligible for not needing to repay student loans, but have not yet sought relieve, more could be done, according to the GAO.

“All the Department of Education can do is notify through the match process that there’s the potential that they may have a disability discharge for the loan,” Said Bawden from the GAO. After that, “people have to respond and there’s a very low response rate,” she said.

The GAO tracks the progress of all recommendations it makes to other agencies. Since the agency published the 2016 report with suggestions to the Department of Education, the department has acted on only one recommendation – they changed some wording on their website.

As for the other recommendations, the GAO is waiting for an update from the Department of Education.

“If you do become totally and permanently disabled, there’s a process in place. If you experienced financial hardship, there’s a process,” said Bawden. “And so our point was that those processes should be easy to access for those who qualify and they just weren’t.”

“It creates additional hardship for people to address the situation that has been brought on by hardship,” she said. And, Bawden also pointed out that by not updating the application and review process, the department of education could also be missing out on collecting loans from borrowers who can pay.

Privacy Concerns

One of the reasons that matching systems between government agencies takes time is that the agencies involved have to determine if they can share the information without violating the federal privacy laws.

“Generally, there are protections for taxpayer data – anything that could identify someone’s tax records is fairly strictly protected,” said Bawden. There are some cases, however, where there are exceptions. The GAO recommended that the department explore the feasibility of automatically verifying income data.

The Department of Education has gotten into trouble for using such data in the past. The Project on Predatory Student Lending, a legal clinic at Harvard University, sued the Department of Education over how they handled data from students who had been defrauded by Corinthian College, a for-profit school.

In March, the clinic alleged that the department used earnings data from the Social Security Administration to deny debt relief to former students of Corinthian College. This use of Social Security Administration data, the clinic asserted, is illegal under the Privacy Act.

Consumer Affairs reported that students who took out loans from Corinthian College and were unable to repay them faced hardships such as default and [had tax returns seized and wages garnished](#).

While in this case, the Education Department worked to use Social Security Administration data against borrowers, Tyler argues that they could use it to help borrowers as well. He pointed out

that the Department of Education and Social Security Administration share information about medical review status under a routine use exception of the Privacy act.

To do that, the Social Security Administration argued that sharing the information of a disabled person between agencies falls under the “health and income maintenance” routine use exception to the Privacy Act, established in a 1995 list of routine uses.

Tyler said he sees no reason why this rule couldn’t also be used to authorize Treasury or the Social Security Administration to disclose earning data to the Department of Education for the purpose of recertifying total and permanent disability discharge.

“If you wanted to do it you would,” said Tyler. “The Obama administration wanted to help people and so they found a way to do it.”