

Congress of the United States

Washington, DC 20510

October 26, 2015

Carolyn W. Colvin
Acting Commissioner
Social Security Administration

Loretta Lynch
Attorney General
U.S. Department of Justice

Dear Commissioner Colvin and Attorney General Lynch,

We are writing to inquire about the steps Social Security Administration (SSA) is taking to ensure that it can correctly account for marital status and administer benefits fairly to all individuals.

The Supreme Court's decisions in *United States v. Windsor* and *Obergefell v. Hodges* were major victories for our country's core values of fairness and equality. We understand that SSA continues to work to implement the Supreme Court's 2013 decision in *United States v. Windsor* that held Section 3 of the Defense of Marriage Act unconstitutional – ending the federal government's system of discrimination against legally married same-sex couples. We are pleased that SSA in coordination with the Department of Justice is now working to implement the Supreme Court's 2015 decision in *Obergefell v. Hodges* that recognized equal rights of same-sex couples to marry. It is especially important that SSA has systems in place to ensure that it is treating all legal marriages equally.

We are concerned to hear that, for some time after the Supreme Court's *Windsor* decision, SSA continued to issue benefits to Supplemental Security Income recipients in same-sex marriages as though these individuals were single, and that for some SSI recipients, SSA is still doing so. Because benefits for unmarried individuals are higher than those for married individuals, SSA's failure to update its policies resulted in overpayments. We understand that SSA has sent overpayment notices to these individuals even though they were overpaid due to SSA's delayed implementation of the law.

Gay & Lesbian Advocates & Defenders and Justice in Aging recently brought a lawsuit alleging that SSA discriminated against Supplemental Security Income recipients in same-sex marriages when SSA failed to recognize these marriages – even when the individuals had notified SSA that they were married. The court dismissed the case without addressing the merits, finding that the plaintiffs failed to exhaust administrative remedies.¹

¹ *Held v. Colvin*, No. CV 15-1732 PA (Jcx) *4 (C.D. Cal. Aug. 3, 2015) (dismissing plaintiffs' complaint), available at <http://www.glad.org/uploads/docs/cases/held-v-colvin/opinion-district-court-8-3-15.pdf>.


SSA should not penalize people who are poor, elderly or disabled because SSA continued issuing benefits to these married individuals as though they were single. According to SSA's statute and regulations, SSA shall avoid penalizing an individual for overpayment if the individual is without fault and if recovery of the overpayment would be against equity and good conscience.² While we understand that generally, SSA makes an individualized determination in the case of an overpayment, we urge SSA to issue a blanket waiver for recovery of overpayment for all of these individuals automatically – especially since SSA's inability to update its systems resulted in SSA's continuing to apply Section 3 of the Defense of Marriage Act long after the Supreme Court struck it down as unconstitutional. Under these circumstances, any effort on the part of SSA to collect overpayments would exacerbate the unlawful discriminatory effect of the Defense of Marriage Act and would be against equity and good conscience.

We would appreciate a response to the questions below by November 18, 2015.


- 1) How many notices has SSA sent seeking to recoup overpayments from individuals married to someone of the same sex?
- 2) Is SSA currently recouping any money in these circumstances and, if so, from how many people?
- 3) How does SSA identify Supplemental Security Income recipients whose benefits should be reduced or suspended because their marriages are now recognized as a result of *Windsor* or *Obergefell*?
- 4) How long would it take for SSA to identify all of the individuals who have received incorrect payments from SSA due to SSA's mistakes in accounting for same-sex marriages?
- 5) Why would it be necessary and a good use of agency resources to put these individuals through an administrative appeal process one at a time?
- 6) How long does SSA expect a typical appeal process on these facts to take?
- 7) What is SSA doing to update its systems and processes so that SSA can correctly take marital status into account and administer benefits fairly to all individuals?

We urge SSA to implement the Supreme Court's decisions as soon as possible and to waive recovery of the overpayments that SSA made to the affected individuals. We appreciate your attention to this matter and look forward to your response.

Sincerely,




Elizabeth Warren
United States Senator

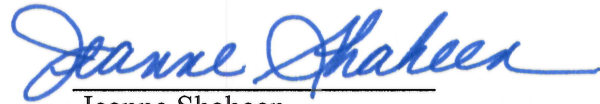


Mark Takano
Member of Congress

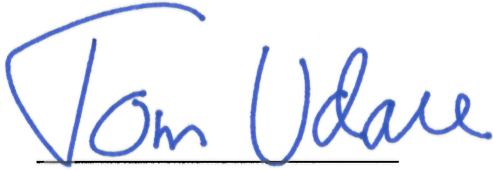
² 42 U.S.C. 1383(b)(1)(B); 20 CFR 416.550.



Brian Schatz
United States Senator



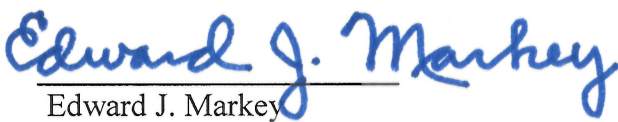
Jeanne Shaheen
United States Senator



Tom Udall
United States Senator



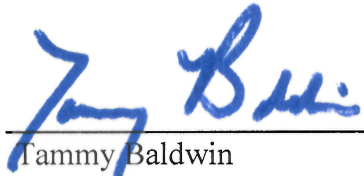
Bernard Sanders
United States Senator



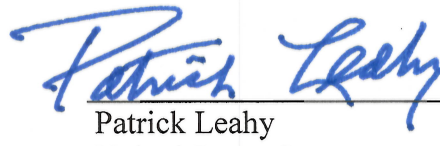
Edward J. Markey
United States Senator



Kirsten Gillibrand
United States Senator



Tammy Baldwin
United States Senator



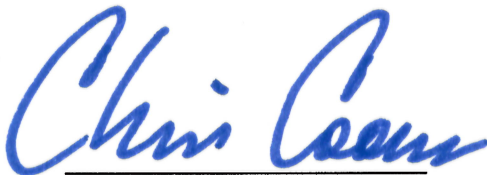
Patrick Leahy
United States Senator




Al Franken
United States Senator



Sheldon Whitehouse
United States Senator



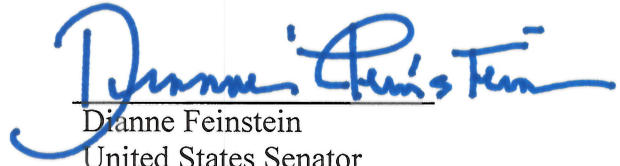
Chris Coons
United States Senator



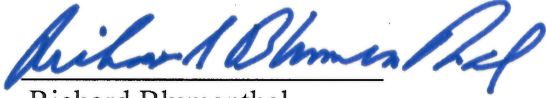
Maria Cantwell
United States Senator



Amy Klobuchar
United States Senator



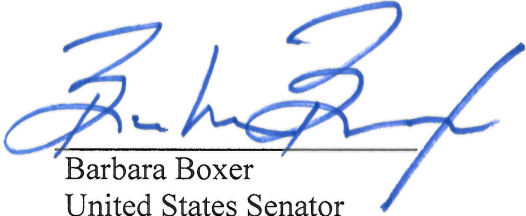
Dianne Feinstein
United States Senator



Richard Blumenthal
United States Senator



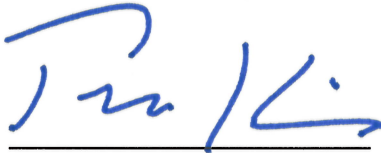
Mazie K. Hirono
United States Senator



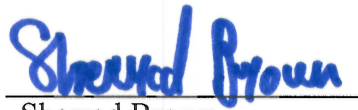
Barbara Boxer
United States Senator



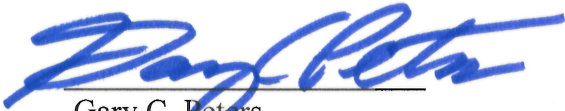
Martin Heinrich
United States Senator



Tim Kaine
United States Senator



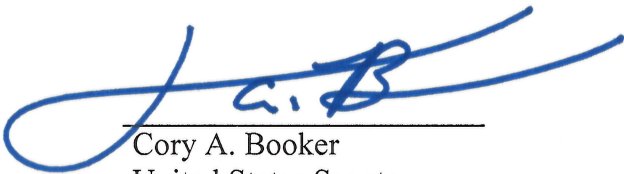
Sherrod Brown
United States Senator



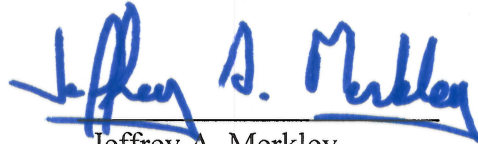
Gary C. Peters
United States Senator



Patty Murray
United States Senator



Cory A. Booker
United States Senator



Jeffrey A. Merkley
United States Senator

Ron Wyden

Ron Wyden
United States Senator

Mark R Warner

Mark R. Warner
United States Senator

Debbie Stabenow

Debbie Stabenow
United States Senator

Bob Casey, Jr.

Robert P. Casey, Jr.
United States Senator

Ben Cardin

Benjamin L. Cardin
United States Senator

Dick Durbin

Richard J. Durbin
United States Senator

Jack Reed

Jack Reed
United States Senator

Barbara Mikulski

Barbara A. Mikulski
United States Senator

Chris Murphy

Christopher S. Murphy
United States Senator

Robert Menendez

Robert Menendez
United States Senator

Charles Schumer

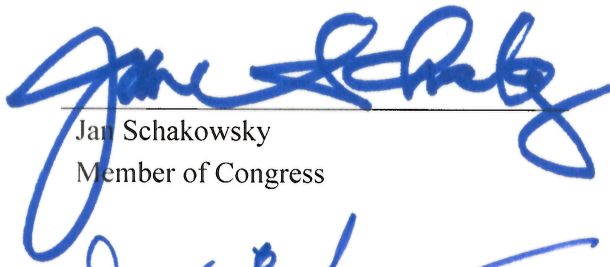
Charles E. Schumer
United States Senator

Michael F. Bennet

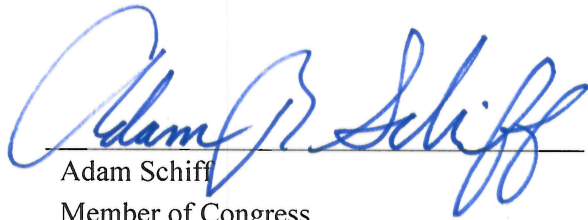
Michael F. Bennet
United States Senator

Angus King

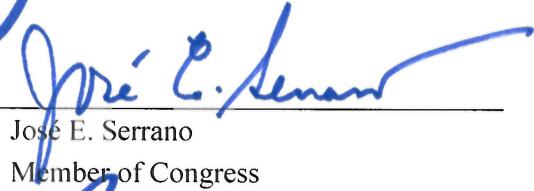
Angus King
United States Senator



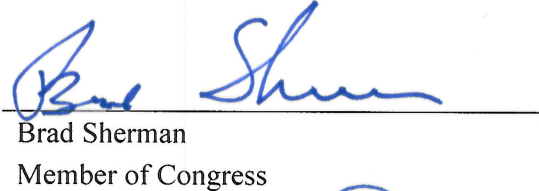
Jan Schakowsky
Member of Congress



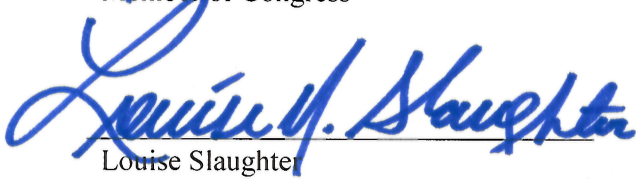
Adam Schiff
Member of Congress



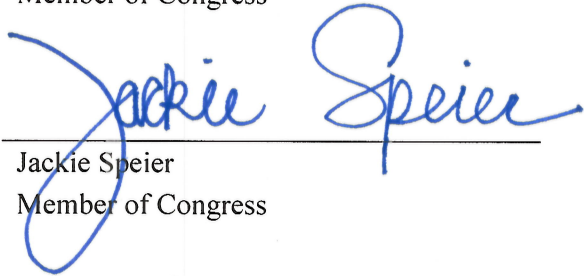
José E. Serrano
Member of Congress



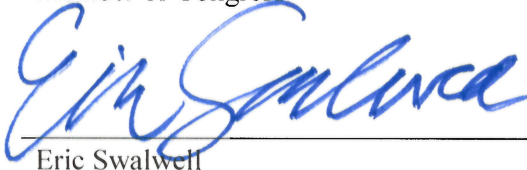
Brad Sherman
Member of Congress



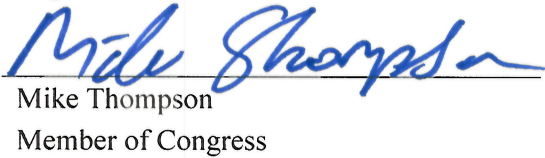
Louise Slaughter
Member of Congress



Jackie Speier
Member of Congress



Eric Swalwell
Member of Congress



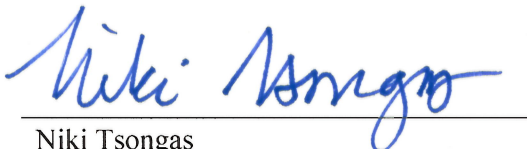
Mike Thompson
Member of Congress



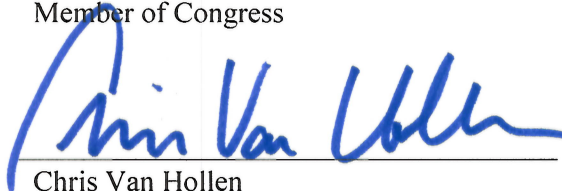
Dina Titus
Member of Congress



Paul Tonko
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Niki Tsongas
Member of Congress



Chris Van Hollen
Member of Congress



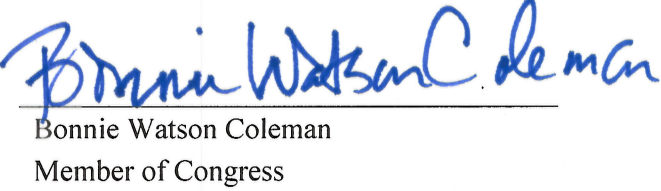
Juan Vargas
Member of Congress



Marc Veasey
Member of Congress



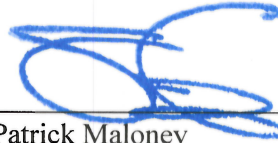
Debbie Wasserman Schultz
Member of Congress



Bonnie Watson Coleman
Member of Congress



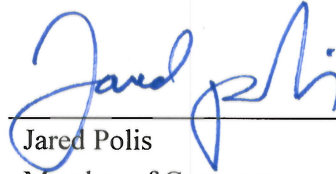
David N. Cicilline
Member of Congress



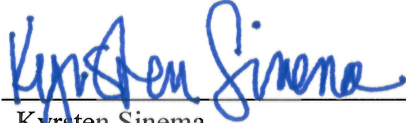
Sean Patrick Maloney
Member of Congress



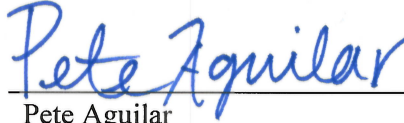
Mark Pocan
Member of Congress



Jared Polis
Member of Congress



Kyrsten Sinema
Member of Congress



Pete Aguilar
Member of Congress



Karen Bass
Member of Congress



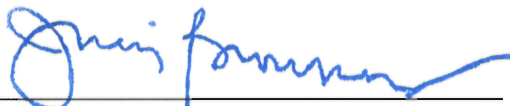
Ami Bera
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Earl Blumenauer
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Suzanne Bonamici
Member of Congress



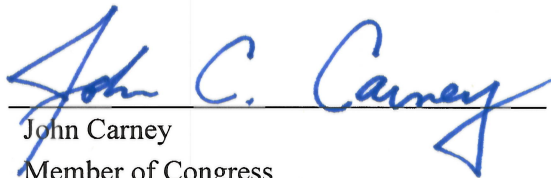
Julia Brownley
Member of Congress



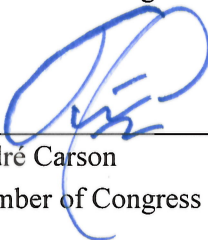
Lois Capps
Member of Congress



Tony Cárdenas
Member of Congress



John Carney
Member of Congress



André Carson
Member of Congress



Matt Cartwright
Member of Congress

Doris Matsui

Doris Matsui
Member of Congress

Betty McCollum

Betty McCollum
Member of Congress

Jim McDermott

Jim McDermott
Member of Congress

James P. McGovern

James P. McGovern
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Grace Meng

Grace Meng
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Patrick Murphy

Patrick Murphy
Member of Congress

Jerrold Nadler

Jerrold Nadler
Member of Congress

Eleanor H. Norton

Eleanor Holmes Norton
Member of Congress

Frank Pallone, Jr.

Frank Pallone, Jr.
Member of Congress

Ed Perlmutter

Ed Perlmutter
Member of Congress

Scott Peters

Scott Peters
Member of Congress

Chellie Pingree

Chellie Pingree
Member of Congress

Lucille Roybal-Allard

Lucille Roybal-Allard
Member of Congress

Raul Ruiz

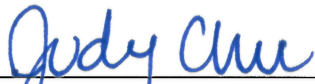
Raul Ruiz
Member of Congress

Linda T. Sánchez

Linda T. Sánchez
Member of Congress

Loretta Sanchez

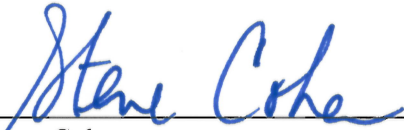
Loretta Sanchez
Member of Congress



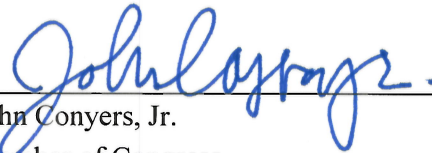
Judy Chu
Member of Congress



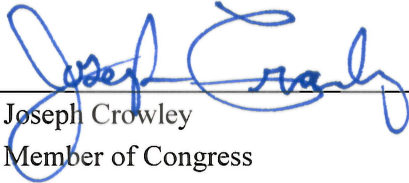
Katherine Clark
Member of Congress



Steve Cohen
Member of Congress



John Conyers, Jr.
Member of Congress



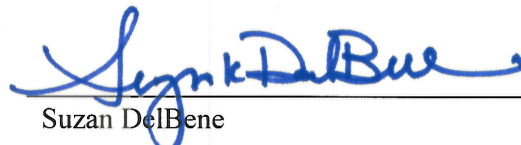
Joseph Crowley
Member of Congress



Susan A. Davis
Member of Congress



Peter A. DeFazio
Member of Congress



Suzan DelBene
Member of Congress



Mark DeSaulnier
Member of Congress



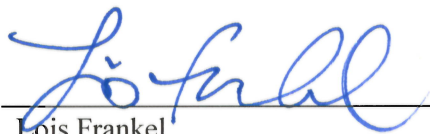
Ted Deutch
Member of Congress



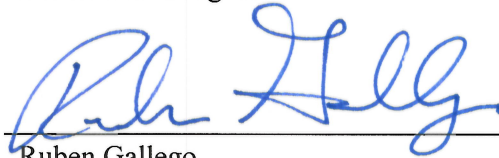
Keith Ellison
Member of Congress



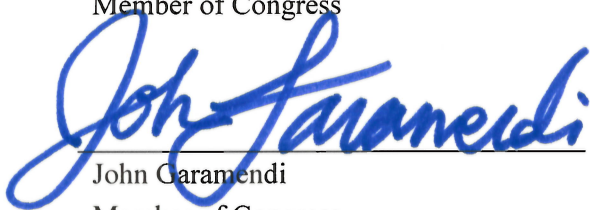
Eliot Engel
Member of Congress



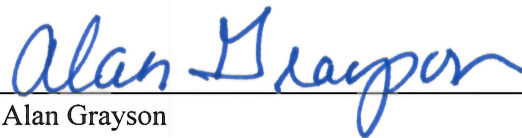
Lois Frankel
Member of Congress



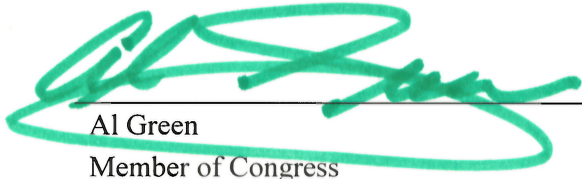
Ruben Gallego
Member of Congress



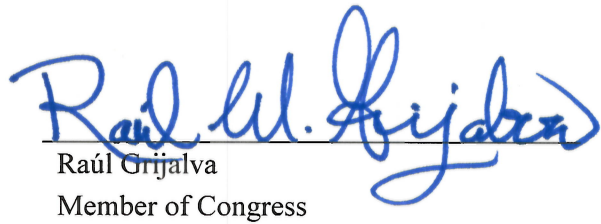
John Garamendi
Member of Congress



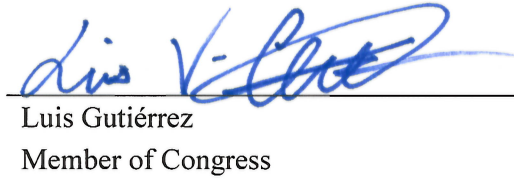
Alan Grayson
Member of Congress



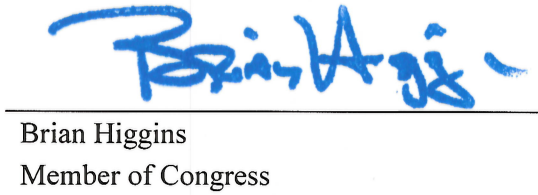
Al Green
Member of Congress



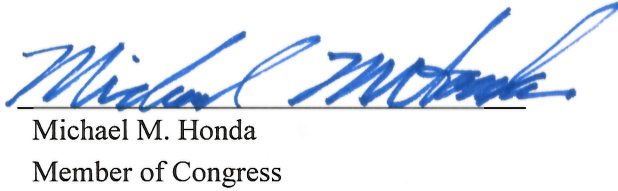
Raúl Grijalva
Member of Congress



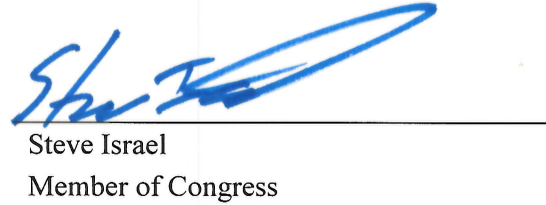
Luis Gutiérrez
Member of Congress



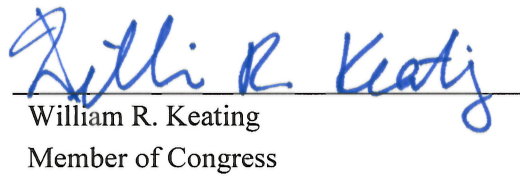
Brian Higgins
Member of Congress



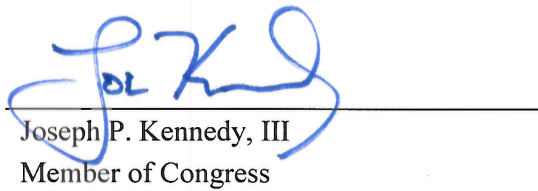
Michael M. Honda
Member of Congress



Steve Israel
Member of Congress




William R. Keating
Member of Congress



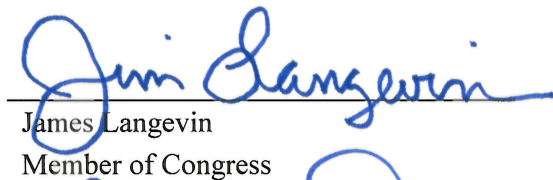
Joseph P. Kennedy, III
Member of Congress



Dan Kildee
Member of Congress



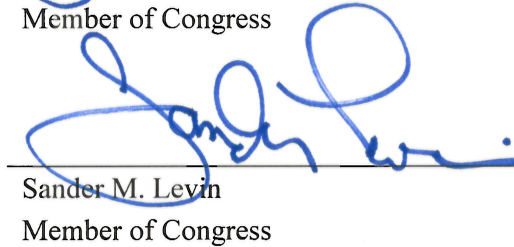
Ron Kind
Member of Congress



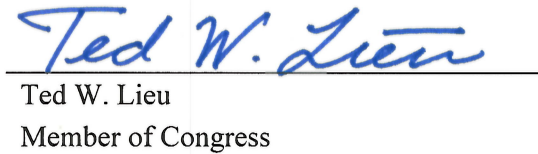
James Langevin
Member of Congress



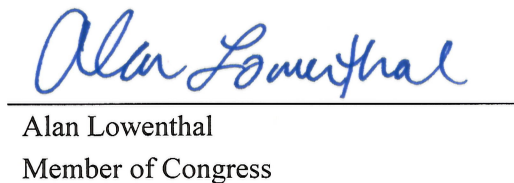
Barbara Lee
Member of Congress




Sander M. Levin
Member of Congress



Ted W. Lieu
Member of Congress



Alan Lowenthal
Member of Congress



Carolyn B. Maloney
Member of Congress

Frederica S. Wilson

Frederica S. Wilson
Member of Congress

Grace F. Napolitano

Grace F. Napolitano
Member of Congress

Peter Welch

Peter Welch
Member of Congress